CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 663

WHEELING STEEL CORPORATION, APPELLANT,

vs.

FRED L. FOX, STATE TAX COMMISSIONER OF WEST VIRGINIA, AND KARL G. SAILER, ASSESSOR OF OHIO COUNTY, WEST VIRGINIA

APPEAL FROM CIRCUIT COURT OF OHIO COUNTY, STATE OF WEST VIRGINIA

FILED DECEMBER 28, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 663

WHEELING STEEL CORPORATION, APPELLANT,

vs.

FRED L. FOX, STATE TAX COMMISSIONER OF WEST VIRGINIA, AND KARL G. SAILER, ASSESSOR OF OHIO COUNTY, WEST VIRGINIA

APPEAL FROM CIRCUIT COURT OF OHIO COUNTY, STATE OF WEST VIRGINIA

INDEX

	Original	Print
Proceedings in Supreme Court of Appeals of West Virginia	a	1
Caption .....(omitted in printing)..	a	
Record from Circuit Court of Ohio County.....	1	1
Petition for appeal from judgment of Circuit Court....	1	1
Caption .....(omitted in printing)..	23	
Petition of Wheeling Steel Corp. for appeal from assessment	23	19
Exhibit "A"—Tax return for assessment year beginning January 1, 1933.....	30	25
Exhibit "B"—Objections and protests against assessment	33	28
Exhibits "C" and "E"—Answer of assessor.....	39	34
Exhibit "D"—Statement of taxpayer.....	42	36
Exhibit "F"—Holding of tax commissioner.....	50	43
Order allowing appeal, etc.	52	45
Order transferring case.....	53	46

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 28, 1936.

—7368-C

	Original	Print
Record from Circuit Court of Ohio County—Continued.		
Order of submission	54	46
Agreed statement of facts (copy) (omitted in printing)	55	
Judgment (copy) (omitted in printing)	70	
Memorandum opinion	74	47
Clerk's certificate (omitted in printing)	90	
Opinion, Hatcher, J.	91	62
Mandate	97	66
Bill of costs (omitted in printing)	98	
Judgment of Circuit Court on mandate of Supreme Court	100	67
Additional stipulation of facts in Circuit Court	103	70
Petition for writ of error	107	72
Assignments of error	110	75
Order refusing writ of error	115	77
Petition for appeal	116	77
Assignments of error	119	80
Order allowing appeal	122	82
Bond on appeal (omitted in printing)	123	
Citation and service (omitted in printing)	124	
Stipulation as to transcript of record	125	84
Clerk's certificate (omitted in printing)	126	
Statement of points to be relied upon and designation as to printing record	127	84

[fol. a] [Caption omitted]

[fol. b] [File endorsement omitted]

[fol. 1]

IN CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of its Intangible Property for the Year 1933 by the Assessor of Ohio County, West Virginia, as Corrected by the Tax Commissioner of the State of West Virginia.

PETITION FOR APPEAL

To their Honors, Judges of the Supreme Court of Appeals of West Virginia:

The petitioners, the State of West Virginia, the County of Ohio and The Board of Education of the County of [fol. 2] Ohio, respectfully represent that they are aggrieved by a final judgment order entered by the Circuit Court of Ohio County, West Virginia, on the 5th day of March, 1934, upon an appeal to that court by the Wheeling Steel Corporation from a decision of the Assessor of Ohio County and the corrections thereto made by the State Tax Commissioner of the State of West Virginia, as provided in Chapter 11, Article 3, Section 25, of the Official Code of West Virginia, (Chapter 41 of the Acts of the Legislature, Regular Session 1933, H. B. 554).

Agreed Statement of Facts

This proceeding is statutory, and was instituted by the petitioner in the manner provided in and as directed by Chapter 11, Article 3, Section 25, of the West Virginia Code (Chapter 41 of the Acts of the Legislature, Regular Session, 1933, H. B. 554); notice was served as therein provided; all the requirements of law in the matter of this appeal have been fully performed by the petitioner, and this proceeding is regularly and properly pending before this Court.

The Petitioner is a Delaware Corporation

Wheeling Steel Corporation was incorporated June 21, 1920, in the State of Delaware, and was such a Delaware corporation on January 1, 1933, and was then and is now qualified to do business as a foreign corporation in the States of West Virginia, Ohio and Minnesota. It was originally designed to be a holding company, and from the date of its incorporation until the year 1923, its sole function was to hold all the capital stock of various companies, its principal subsidiaries being Wheeling Steel and Iron Company, La Belle Iron Works, and Whitaker-Glessner Company, all West Virginia corporations, and Consumers Mining Company, LaBelle Coke Company and Wheeling Coke Company, all Pennsylvania corporations.

[fol. 3] In 1923, the manufacturing properties of the three first above-named subsidiary companies were conveyed to Wheeling Steel Corporation, which thereupon became primarily and now is an operating company, and the West Virginia corporations were subsequently dissolved. The petitioner, Wheeling Steel Corporation, also controls several subsidiary companies organized and doing business in various states.

The Wheeling Steel Corporation's reasons for incorporation in Delaware were as follows:

1. Being originally a holding company, it owned very little tangible property.

2. The greater part of the tangible property previously controlled by the petitioner through stock ownership, and now owned by it, was and is located outside West Virginia.

3. By incorporating in a state other than Ohio and West Virginia the petitioner could bring and defend actions in the Federal courts.

4. The laws of the State of Delaware favored corporations.

5. Financial structures permitted under the laws of the State of Delaware were flexible, designed to meet changing conditions.

6. The Delaware constitution provided that shares of the capital stock of Delaware corporations could not be taxed by any law then or thereafter existing.

7. Delaware incorporation fees and annual franchise taxes were low, compared with those imposed by other states.

[fol. 4] 8. Delaware exacted no tax upon the transfer or issue of the capital stock.

9. In 1920 intangible personal property was taxable in West Virginia at the same rate as that assessed upon real estate and tangible personal property.

Location of the Offices of the Wheeling Steel Corporation

The Corporation Law of the State of Delaware, as it existed in 1920 and on January 1, 1933, and as it now existed, requires each corporation organized thereunder to state in the certificate of incorporation the name of the county and the city, town or place within the county in which its principal office or place of business is to be located in that State.

The principal office of Wheeling Steel Corporation in the State of Delaware is stated in its charter to be located at 901 Market Street, in the city of Wilmington, County of New Castle, and was on January 1, 1933, and is now located at 900 Market Street in said city of Wilmington.

The Wheeling Steel Corporation maintains its principal office in Delaware through the Corporation Service Company, a corporation, as permitted and required by the laws of Delaware. The principal office maintains a duplicate stock ledger and records of all transactions with reference to petitioner's capital stock. The originals of such ledger and records are kept in New York City. The Wheeling Steel Corporation does not have any individual office building or suite of offices in the State of Delaware, but maintains such an office as is required by Delaware laws for corporations organized in that State. Petitioner, Wheeling Steel Corporation, files such reports and pays such franchise taxes as are required by the State of Delaware to be filed and paid by a corporation organized and existing under the laws of that State.

[fol. 5] The Wheeling Steel Corporation's general business offices are located in Wheeling, Ohio County, West Virginia, and it maintains sales offices in Atlanta, Georgia; Buffalo, New York; Cincinnati, Ohio; Detroit, Michigan; New Orleans, Louisiana; Philadelphia, Pennsylvania; San

Francisco, California; Boston, Massachusetts; Chicago, Illinois; Dallas, Texas; Los Angeles, California; St. Louis, Missouri; Seattle, Washington, and New York City.

The Wheeling Steel Corporation's general books and accounting records are kept at the Wheeling office. Plant offices maintain original detailed accounting records showing (a) materials received, (b) railroad cars received and shipped, (c) detailed labor costs, (d) production and shipments, (e) detailed stocks of goods and (f) payrolls. Employment offices are maintained at each plant.

Sales contracts are negotiated and orders are taken by the various sales offices subject to acceptance or rejection at Wheeling.

The Portsmouth, Ohio, plant makes up and mails out invoices for all products shipped from that plant, together with bills of lading and shipping notices. All other plants prepare complete invoices with exception of information with reference to the price of material described therein. The latter invoices are then forwarded to Wheeling where they are completed and mailed to the customer. Bills of lading and shipping notices are, however, mailed to customers from the individual plants. All invoices are payable in Wheeling.

The majority of commercial accounts are paid by check issued in Wheeling. Payrolls are made up and payroll checks are prepared and signed at the various plants and are distributed to the employees by the respective plants. Such checks are paid with funds on deposit in banks in localities where the plants are situated.

Under the law of Delaware, stockholders' and directors' meetings of Delaware corporations may be held within or without the State of Delaware; meetings of directors and stockholders of the Wheeling Steel Corporation are held [fol. 6] in Wheeling. Such meetings are held in conformity with the laws of Delaware.

The Chairman of the Board, President, Treasurer, Secretary and Chief Counsel reside at Wheeling. Local counsel are retained in the cities in Ohio in which the principal plants are located.

The capital stock is transferable in both New York City and Wheeling, but is registerable only at the office of the

Registrar in New York City. Capital stock records are maintained in New York City and at the Wheeling Steel Corporation's Delaware office.

Dividends, when declared, are ordered to be paid and distributed at meetings held at Wheeling, although the checks are drawn and distributed by the Dividend Disbursing Agent located in New York City, and are paid with funds on deposit in banks in New York City.

The petitioner, Wheeling Steel Corporation, owns a twelve-story office building situated in Wheeling, approximately forty-three (43) per cent of which is occupied by officers and office employees of the Petitioner.

Location of the Properties of the Wheeling Steel Corporation

Manufacturing plants operated by the petitioner, Wheeling Steel Corporation were, on January 1, 1933, and are now located as follows:

West Virginia

Wheeling, Ohio County.

Benwood, Marshall County (5 miles from Wheeling Office).

Follansbee, Brooke County (25 miles from Wheeling Office).

Beech Bottom, Brooke County (12 miles from Wheeling Office)

[fol. 7]

Ohio

Steubenville, Jefferson County (25 miles from Wheeling Office).

Yorkville, Jefferson County (25 miles from Wheeling Office).

Martins Ferry, Belmont County (3 miles from Wheeling Office).

Portsmouth, Scioto County (200 miles from Wheeling Office).

On January 1, 1933, the Wheeling Steel Corporation owned, and now owns coal properties in both West Vir-

ginia and Ohio, and iron ore properties in Minnesota, and controls, through stock ownership, coal properties in Pennsylvania and Kentucky.

The Wheeling Steel Corporation, on January 1, 1933, owned four steamboats, two motor ships, eighty-five coal barges, six freight barges and two fuel barges, operating on the Allegheny, Ohio and Mississippi Rivers, transporting coal and steel. These boats are registered at the Port of Pittsburgh. The petitioner's first and Refunding Mortgage and Deed of Trust, dated as of July 1, 1923, which is a lien upon the above river equipment, is recorded in Delaware.

The total assessed value of the real estate and tangible personal property owned by the Wheeling Steel Corporation on January 1, 1933, was $31,977,600.00. The assessed value of its real estate and tangible personal property in West Virginia was $8,673,205.00 or 27.10% of the total.

The following table shows the assessed values of the real estate and tangible personal property of the Wheeling Steel Corporation as of January 1, 1933, and the percentages thereof located in the various counties of the State of West Virginia, and the total assessed value of such properties located outside West Virginia:

[fol. 8]

	Assessed Value	Percentage of Assessed Value
Berkeley County, W. Va.	$6,945	.02%
Brooke County, W. Va.	3,840,500	12.00%
Marshall County, W. Va.	3,047,520	9.52%
Mason County, W. Va.	105,690	.33%
Ohio County, W. Va.	1,672,550	5.23%
Total in West Virginia	8,673,205	27.10%
Total outside West Virginia	23,324,395	72.90%
	$31,997,600	100.00%

The following table shows the total shipments and percentage thereof made by Wheeling Steel Corporation in 1932 from its various plants, the shipments from West Virginia plants being indicated by counties:

	Value.	Percentage
Brooke County, West Virginia	$1,511,855.93	8.31%
Marshall County, West Virginia	2,773,343.88	15.24%
Ohio County, West Virginia	117,672.20	.65%
Total shipments from West Va. plants	4,402,872.01	24.20%
Total shipments from plants located outside West Virginia	13,787,742.25	75.80%
	$18,190,614.26	100.00%

Shipments from plants located in Jefferson County, Ohio, amounted, in 1932, to $8,941,949.83, and shipments from plants located in Scioto County, Ohio, amounted to $3,737,525.27.

Other bases for comparisons between activities of the Corporation carried on within and without the State of West Virginia are as follows:

[fol. 9] Production of Finished Material for Sale in 1932

	Gross tons	Percentage
Produced in West Virginia	58,868	15.6%
Produced outside West Virginia	319,374	84.4%
Total	378,242	100.00%

Cost of Production of Finished Material for Sale in 1932

	Value	Percentage
In West Virginia	$2,083,875.09	15.05%
Outside West Virginia	13,383,690.92	84.95%
Total	$15,467,566.01	100.00%

Average Number of Employees in 1932

	Number	Percentage
In West Virginia	1,395	19.45%
Outside West Virginia	5,775	80.55%
Total	7,170	100.00%

Average Number of Employees in 1933 (First Six Months)

	Number	Percentage
In West Virginia	2,503	26.62%
Outside West Virginia	6,901	73.38%
Total	9,404	100.00%

Payrolls in 1932

	Amount	Percentage
In West Virginia	$1,417,273.53	16.22%
Outside West Virginia	7,320,964.24	83.78%
Total	$8,738,237.77	100.00%

[fol. 10] Payrolls in 1933 (First Six Months)

	Amount	Percentage
In West Virginia	$840,500.66	17.17%
Outside West Virginia	4,054,509.79	82.83%
Total	$4,895,010.45	100.00%

Purchases in 1932

	Amount	Percentage
In West Virginia	$831,831.03	10.58%
Outside West Virginia	7,032,271.37	89.42%
Total	$7,864,102.40	100.00%

Purchases in 1933 (First Six Months)

In West Virginia	$634,381.78	11.12%
Outside West Virginia	5,072,575.38	88.88%
Total	$5,706,957.16	100.00%

Ingot Capacity

	Tons per year	Percentage
Benwood, West Virginia	250,000	16.6%
Steubenville, Ohio	750,000	50.0%
Portsmouth, Ohio	500,000	33.4%
	1,500,000	100.0%

"Ingot Capacity" is a recognized basis of determining the producing ability of a steel company.

The Tax Return

The Wheeling Steel Corporation filed its tax return, being Form S.T.C.O. No. 3, with the Assessor of Ohio County, West Virginia, for the assessment year beginning January 1, 1933, as required by law.

[fol. 11] In its said return the Wheeling Steel Corporation reported the items in dispute as follows:

Item 1. (Money on hand and on deposit)	$312,729.00
Item 6. (Accounts and notes receivable)	72,310.00
	$385,039.00

The Assessor's Revaluation of Money

The Assessor verbally advised representatives of the petitioner that he had procured a copy of the "Wheeling Steel Corporation and Subsidiary Companies Consolidated Balance Sheet" as at December 31, 1932, in which appears the item "Cash in banks and on hand—$2,703,974.38", deducted therefrom the cash reported to him on tax returns for the same period made by three subsidiary companies of the petitioner, as follows:

Wheeling Corrugating Company	$277,580.00
The Consolidated Expanded Metal Co.	15,792.00
Ackermann Manufacturing Company	3,156.00
	$296,528.00

and valued the Wheeling Steel Corporation's money on hand and on deposit at $2,517,450.00. We are unable to state how this latter figure was reached, for, following the Assessor's stated procedure, the correct remainder is $2,407,446.38. It is also to be noted that in the Assessor's Answer to the Wheeling Steel Corporation's Protest (Exhibit C) the Assessor's valuation of this item is $2,380,300.00. It is agreed that the total amount of cash in banks and on hand on January 1, 1933, owned by the petitioner, was $2,307,773.61.

The Assessor's Revaluation of Receivables

The Assessor also verbally advised representatives of the Wheeling Steel Corporation that he had obtained from

the above-mentioned "Wheeling Steel Corporation and [fol. 12] Subsidiary Companies Consolidated Balance Sheet" the following items:

Accounts and notes receivable, less reserve	$3,277,848
Advance payments on ore contracts	153,311
Balance due from Employees under stock purchase plan	59,676
	$3,492,835

deducted therefrom the accounts and notes receivable reported to him on tax returns for the same period made by three subsidiary companies of the petitioner as follows:

Wheeling Corrugating Company	$880,890
The Consolidated Expanded Metal Co.	111,460
Ackermann Manufacturing Company	53,972
	$1,046,322

and valued the accounts and notes receivable of the Wheeling Steel Corporation at $2,446,500.00. It is to be noted, however, that in the Assessor's Answer to the Wheeling Steel Corporation's protest, (Exhibit C), the Assessor's valuation of this item is $2,399,000. It is agreed that the total amount of accounts and notes receivable due the petitioner on January 1, 1933, less doubtful and disputed claims estimated at their probable worth, was $2,234,743.11.

Certification of Questions to State Tax Commissioner

Pursuant to the statute the Assessor, upon request of the petitioner, regularly and properly certified to the State Tax Commissioner the questions of valuation of the money on hand and on deposit and of the accounts and notes receivable of the petitioner.

The State Tax Commissioner's Decision

The State Tax Commissioner considered the questions raised by the Petitioner's Protest and the Assessor's An- [fol. 13] swer thereto, allowed as deductions from $2,517,450.00 (one of the valuations placed by the Assessor upon the petitioner's money on hand and in bank) various sums

of money totalling $72,530.57 held or deposited by subsidiary companies of the petitioner other than three subsidiary companies herein specifically mentioned, and instructed the Assessor that the remainder, or $2,444,919.43, be assessed to the petitioner.

The State Tax Commissioner further allowed as deductions from $2,446,500 (one of the valuations placed by the Assessor upon the petitioner's accounts and notes receivable) various accounts and notes receivable totalling $244,783.92 which were payable to subsidiary companies of the petitioner other than those subsidiary companies herein specifically mentioned, and also allowed as a deduction the item appearing in said Consolidated Balance Sheet as "Advance Payments on Ore Contracts—$155,311.84"; and instructed the Assessor that the remainder, or $2,046,404.24, be assessed to the Wheeling Steel Corporation.

The State Tax Commissioner refused to allowed as a further deduction the item appearing on the aforesaid Consolidated Balance Sheet as "Balance Due from Employees under Stock Purchase Plan—$59,675.16". This money was, on January 1, 1933, owed to the petitioner by employees residing in various states, and represents the unpaid purchase price of capital stock of the petitioner sold by it to said employees. Of the above amount, the sum of $25,238.66 was owed to the Wheeling Steel Corporation by residents of West Virginia.

Petitioner's Computation of Its Cash Taxable in West Virginia

The total amount of cash in banks and on hand on January 1, 1933, owned by the Wheeling Steel Corporation was $2,307,773.61, located as follows:

[fol. 14] In West Virginia	$849,161.99
In Ohio	204,733.20
In Pennsylvania	660,626.25
In New York	589,599.04
In Illinois	3,663.13
	$2,307,773.61

practically all of which had been received as the proceeds from sales of goods shipped in interstate commerce which

had been manufactured in West Virginia and elsewhere in the values and proportions hereinbefore shown.

The petitioner was advised by counsel that it need not report for taxation in West Virginia the total of its cash in banks and on hand, and that it should report only that proportion of the total which past experience had proved was needed in its West Virginia business. The statutes of this State do not provide any method of allocation. The petitioner used the following formula:

West Virginia payrolls—West Virginia purchases x total cash—Cash subject to tax in West Virginia Total payrolls total purchases

In figures, the formula appears as follows:

$$\frac{1,417,273.53 - 831,831.03}{8,738,237.77 - 7,864,102.40} \times 2,307,773.61 - 312,703.32$$

The Corporation reported, under Item 1 of the return, the sum of $312,729.00 or 13.58%.

Paragraph B, of Part XI of the Petition filed in this proceeding, appearing on page 4 thereof, sets forth inaccurately the method used by the Wheeling Steel Corporation in computing its cash in banks and on hand taxable in West Virginia. In all proceedings in this cause said paragraph shall be taken to read as follows:

"B. In returning for taxation as hereinbefore set out [fol. 15] the item of $312,729.00 as cash, the amount thereof was returned by petitioner upon advice of counsel and represented that proportion of its total cash which the sum of its West Virginia payrolls and West Virginia purchases during 1932 bore to its total payrolls and purchases during said period."

Petitioner's Computation of its Accounts and Notes Receivable Subject to Taxation in West Virginia

The total amount of accounts and notes receivable due the petitioner on January 1, 1933, less doubtful and disputed claims estimated at their probable worth, was $2,234,743.11.

The Wheeling Steel Corporation was advised by counsel that it need not report for taxation in West Virginia the total of its accounts and notes receivable, and that it should

report only those accounts and notes receivable which were owed to it by residents of West Virginia.

The total amount due to Wheeling Steel Corporation from residents of West Virginia on January 1, 1933, less doubtful and disputed claims estimated at their probable worth, was $72,310, which is the amount reported at Item 6 of the Return.

The amount due to Wheeling Steel Corporation from residents of West Virginia on January 1, 1933, for goods manufactured by the Wheeling Steel Corporation in West Virginia, less doubtful and disputed claims estimated at their probable worth, was $26,296.96.

The amount due to petitioner from residents of West Virginia on January 1, 1933, for goods manufactured by the Wheeling Steel Corporation outside West Virginia and shipped in interstate commerce, less doubtful and disputed claims estimated at their probable worth, was $46,013.04.

Petitioner's Indebtedness on January 1, 1933

On January 1, 1933, the petitioner was indebted to vari-
[fol. 16] ous persons, firms, and corporations in the total sum of $27,740,010.00.

Petitioner Pays to Ohio Taxes on Certain Intangible Property

In order to determine the amount of accounts receivable of a foreign corporation subject to taxation in Ohio, the Ohio statutes provide that current accounts payable shall be deducted from the total of current accounts receivable and prepaid items, and that the result shall be apportioned in accordance with the ratio of current accounts receivable arising from business transacted within Ohio to the total current accounts receivable. Under these Ohio statutes the Wheeling Steel Corporation has been assessed as of January 1, 1933, on accounts and notes receivable amounting to $250,133.42, which amount is included in the total amount of accounts and notes receivable assessed against the Wheeling Steel Corporation by the Assessor of Ohio County and the Tax Commissioner as of January 1, 1933.

State of West Virginia, by —— ——, Attorney General; —— ——, State Tax Commissioner; Wheeling Steel Corporation, by —— ——, Its Attorney.

Judgment Order Entered by the Circuit Court of Ohio County, West Virginia

WEST VIRGINIA:

Be it remembered that at a Circuit Court held for the County of Ohio, at the Court House of said County, on the 5th day of March, 1934, among others the following proceedings were had.

[fol. 17] IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of Its Intangible Property for the Year 1933 by the Assessor of Ohio County, West Virginia, as Corrected by the Tax Commissioner of the State of West Virginia

On Appeal from Assessment

Order

This matter came on to be heard upon the petition of Wheeling Steel Corporation, a corporation, and the exhibits filed thereto and made a part thereof; and further upon the agreed statement of facts hereby made a part of the record in this cause, and upon the following additional facts omitted from or corrections to said agreed statement of facts, but hereby, by agreement of all parties hereto, made a part hereof, the same as if they had been contained in said agreed statement of facts, and all of which were considered by the Court in its determination hereof:

(1) Petitioner is now and was, on January 1, 1933, engaged in the manufacture and sale of steel products.

(2) The place of manufacture of the goods referred to in the petition and agreed statement of facts was also the place of shipment of said goods to the respective purchasers thereof.

(3) The amount of accounts receivable representing indebtedness due petitioner on January 1, 1933, from nonresidents of goods sold and manufactured in and shipped

from West Virginia was Three Hundred Two Thousand One Hundred Dollars and Forty-two cents ($302,100.42).

(4) The amount of accounts receivable due to petitioner on January 1, 1933, from debtors residing in West Virginia for goods sold and manufactured in West Virginia and shipped by petitioners to purchasers, resident in West Virginia, was the sum of Seventy-two Thousand Three Hundred and Ten ($72,310.00) Dollars.

[fol. 18] (5) The total amount of cash in banks and on hand on January 1, 1933, owned by petitioner wherever located was Two Million Three Hundred Seven Thousand Seven Hundred Seventy-three Dollars and Sixty-one Cents ($2,307,773.61) of which the amount of Eight Hundred Forty-nine Thousand One Hundred Sixty-one Dollars and Ninety-nine Cents ($849,161.99) was on deposit in West Virginia, the balance being outside West Virginia.

(6) Of such Eight Hundred Forty-nine Thousand One Hundred Sixty-one Dollars and Ninety-nine Cents ($849,161.09), the amount of Fifty-three Thousand Seventy-two Dollars and Sixty-three Cents ($53,072.63) had been received by petitioner on account of sales of goods sold and manufactured in and shipped from West Virginia to purchasers resident in West Virginia.

(7) Of such Eight Hundred Forty-nine Thousand One Hundred Sixty-one Dollars Ninety-nine Cents ($849,161.99) the amount of Sixty-eight Thousand Six Hundred Twelve Dollars and Twenty-eight Cents ($68,612.28) had been received by petitioner on account of sales of goods sold and manufactured in West Virginia by petitioner but sold and shipped by petitioner to purchasers resident outside of the State of West Virginia.

(8) The balance of said sum of Eight Hundred Forty-nine Thousand One Hundred Sixty-one Dollars and Ninety-nine Cents ($849,161.99) to-wit: Seven Hundred Twenty-seven Thousand Four Hundred Seventy-seven Dollars and Eight Cents ($727,477.08) on deposit in West Virginia banks had been received by petitioner from sales of goods manufactured and shipped by petitioner from points outside of West Virginia.

And upon all other orders and proceedings heretofore entered and had herein, and upon briefs of counsel filed upon behalf of petitioner and on behalf of the County of Ohio, State of West Virginia, and the Magisterial and School Districts of said County of Ohio.

And the matters arising on said arguments having heretofore been submitted to the court for its consideration, [fol. 19] and the court having considered all of said matters and being now advised of its opinion and judgment thereof, is of the opinion that petitioner, Wheeling Steel Corporation, is entitled to the following relief:

(1) The amount of money on hand and on deposit in banks, trust companies, or with any corporation, person or i-dividual, on the 1st day of January, 1933, upon or for which petitioner should be assessed, is the sum of One Hundred Twenty-one Thousand Six Hundred Eighty-four Dollars and Ninety-one Cents ($121,648.91), it being the amount of money on deposit in West Virginia representing the proceeds from sales of goods sold in West Virginia manufactured in West Virginia and shipped to residents and non-residents of West Virginia.

(2) The amount of all notes, book accounts and accounts receivable upon or for which petitioner should be assessed should be Three Hundred Seventy-four Thousand Four Hundred Ten Dollars and Forty-two Cents ($374,410.42), it being the amount due petitioner on account of goods sold and manufactured in and shipped from West Virginia, to residents and non-residents of West Virginia.

It is adjudged, ordered and decreed by the Court that the total amount of money, bonds, credits and investments for which petitioner should be assessed for the year 1933 should be Four Hundred Ninety-six Thousand Ninety-five Dollars and Thirty-three Cents ($496,095.33), for reasons stated in the written opinion handed down in this cause by the Honorable J. H. Brennan, Judge of the Circuit Court of Ohio County, which is hereby filed and made a part of the record in this cause, said opinion being hereby corrected as to the statement of facts therein so as to show the corrections and amendments as hereinbefore in this order made: and that the amount over and above said sum of Four Hundred Ninety-six Thousand Ninety-five Dollars

and Thirty-three Cents ($496,095.33) is not taxable to the said Wheeling Steel Corporation.

And it is further ordered, adjudged and decreed that the [fol. 20] assessment of said property as made by the assessor and corrected by the State Tax Commissioner in the sum of Four Million Four Hundred Ninety-one Thousand Three Hundred Twenty-three Dollars and Sixty-seven Cents ($4,491,323.67) is hereby ordered to be corrected by said Assessor, so that said assessment shall read Four Hundred Ninety-six Thousand Ninety-five Dollars and Thirty-three Cents ($496,095.33), and the balance thereof is held to be non-taxable to Wheeling Steel Corporation.

It is further adjudged, ordered and decreed that the said Wheeling Steel Corporation is not entitled to deduct from the amount of its money, bonds, credits and investments the amount of its indebtedness due and owing January 1, 1933.

It is further adjudged, ordered and decreed that a copy of this order be certified by the Clerk of this Court within twenty days from the entering thereof to the Auditor, Clerk, Sheriff and Assessor of Ohio County.

It is also directed that the Clerk of this Court file this order in the office of the Clerk of the County Court of Ohio County, Tax Commissioner and the Auditor of the State of West Virginia.

And to so much of this order as reduced the assessment as made by the Assessor of Ohio County and State Tax Commissioner from Four Million Four Hundred Ninety-one Thousand Three Hundred Twenty-three Dollars and Sixty-seven Cents ($4,491,323.67) to Four Hundred Ninety-six Thousand Ninety-five Dollars and Thirty-three Cents ($496,095.33), said Assessor, State Tax Commissioner, County Court of Ohio County, Auditor of the State of West Virginia and the State of West Virginia by their respective counsel object and except; and to so much of this order as held Wheeling Steel Corporation not to be entitled to deduct from the amount of its money, bonds, credits and investments, the amount of its debts owing January 1, 1933, said Wheeling Steel Corporation objects and excepts; and likewise said petitioner, Wheeling Steel Corporation, objects and excepts to so much of this order as held pe-

[fol. 21] titioner assessable upon any amount of accounts receivable and bank deposits.

Grounds for Appeal

From the adverse rulings excepting certain properties of the Wheeling Steel Corporation from taxation, your petitioners respectfully seek an appeal. And for grounds of appeal it is respectfully submitted that the Circuit Court of Ohio County erred in the following particulars:

First: The said tribunal erred in finding that the Wheeling Steel Corporation was not entitled to pay taxes on the total cash owned by the Wheeling Steel Corporation in the amount of Two Million, Three Hundred Seven Thousand, Seven Hundred, Seventy-three Dollars and Sixty-one Cents ($2,307,773.61) because this finding is contrary to the law of the State of West Virginia as provided in Chapter 11, Article 3, Section 13 of Michie's 1932 Code and Chapter 11, Article 3, Section 12, 1933 Supplement, Michie's Code.

Second: The said tribunal erred in finding that the Wheeling Steel Corporation was not entitled to pay taxes on Two Million, Forty-six Thousand, Four Hundred, Four Dollars and Twenty-four Cents ($2,046,404.24), being the total amount of the accounts and notes receivable by the Wheeling Steel Corporation because this finding is contrary to the law of the State of West Virginia as provided in Chapter 11, Article 3, Section 13, of Michie's 1932 Code and Chapter 11, Article 3, Section 12, 1933 Supplement, Michie's Code.

Wherefore, Your petitioners pray in accordance with Chapter 11, Article 3, Section 25, of the Official Code of West Virginia, 1931, that an appeal may be granted from said decree and order of the Circuit Court of Ohio County, West Virginia, entered on the 5th day of March, 1934, and that upon a hearing of this cause, said decree and order may be reviewed and reversed and that this Honorable Court enter such decree and order as the Circuit Court of [fol. 22] Ohio County should have entered in fixing the value of the assessments upon which the Wheeling Steel Corporation should pay taxes.

And your petitioners will ever pray, etc.

State of West Virginia, by Homer A. Holt, Attorney-General, and Fred L. Fox, State Tax Commissioner. County of Ohio, by Donald McKee, Prosecuting Attorney of Ohio County, West Virginia, by Wm. C. Piper, First Assistant Prosecuting Attorney of Ohio County, West Virginia. The Board of Education of the County of Ohio, by Donald McKee, Prosecuting Attorney of Ohio County, West Virginia, by Wm. C. Piper, First Assistant Prosecuting Attorney of Ohio County, West Virginia.

STATE OF WEST VIRGINIA, to-wit:

The writ of error prayed for in the foregoing petition was allowed in Court at Charleston, on the 7th day of May, 1934. No bond is required.

Attest: Wm. B. Mathews, Clerk Supreme Court of Appeals.

[fol. 23] [Caption omitted]

IN CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of its Intangible Property by the Assessor of Ohio County, West Virginia, as Corrected by the Tax Commissioner of the State of West Virginia for the Year 1933.

PETITION FOR APPEAL FROM ASSESSMENT—Filed Aug. 26, 1933

To the Honorable Judges of said Court:

I

This is the petition of Wheeling Steel Corporation, a corporation, for an appeal from the assessment made by the [fol. 24] Assessor of Ohio County, as corrected by the Tax Commissioner of the State of West Virginia, upon certain of its intangible properties for the year 1933, brought under the provisions of Chapter 41 of the Acts of the Legislature

of West Virginia, regular session, 1933, being House Bill of 554.

II

Petitioner is a Delaware Corporation with its principal office at 900 Market Street, Wilmington, Delaware, and with its general offices in Wheeling, Ohio County, West Virginia. Its offices were so located on and prior to January 1, 1933, and at all times since that date.

III

Petitioner respectfully shows that in accordance with the law it filed a return with the Assessor of Ohio County, West Virginia, being S.T.C.O. Form No. 3, for the assessment year beginning January 1, 1933, as required by law, copy of which return is filed herewith as Exhibit A and prayed to be read as a part of this petition.

IV

After receipt by the Assessor of said return, the said Assessor raised the amount of Item I under "Money, Bonds, Credits, and Investments" from the amount returned by this petitioner, to-wit, the amount of $312,729.00, to $2,517,450.00, and raised the amount of Item 6 thereof from the amount of $72,310 as returned by this petitioner to $2,446,500 and made a total assessment against your petitioner on account of such Items in the amount of $4,963,950 instead of $385,039 as returned by your petitioner.

V

Petitioner further shows that in its said return it showed indebtedness due from it to various creditors as of Janu- [fol. 25] ary 1, 1933, in the amount of $27,740,010 and claimed a deduction on account thereof from the value of its money, bonds, credits and investments, as returned by it, which deduction said Assessor disallowed.

VI

Petitioner further respectfully shows that pursuant to provisions of Chapter 41 of the Acts of Legislature of West Virginia at the regular session, 1933, being House Bill No.

554, upon ascertaining that the Assessor had proceeded to assess petitioner in the larger amounts as hereinbefore set forth, it filed its objections and protests in writing with the Assessor, a copy of which objections and protests is filed herewith as Exhibit B and prayed to be read and taken as a part of this petition.

VII

Petitioner further shows that the Assessor thereupon determined the questions raised by petitioner in its objections and refused to sustain any part of petitioner's objections and protests and refused to make proper corrections and stated in writing the reasons for his said refusal, which statement is filed herewith as Exhibit C and prayed to be read and taken as a part of this petition.

VIII

Petitioner further respectfully shows that pursuant to said Chapter 41 it requested the said Assessor to certify the questions to the State Tax Commissioner, which the said Assesor thereupon did. Your petitioner and said Assessor furnished to the said Tax Commissioner separate sworn statements of the questions involved, which said sworn statements are filed herewith as Exhibits D and E, respectively, and prayed to be read and taken as a part of this petition.

[fol. 26]

IX

Petitioner further shows that the Tax Commissioner upon receipt of the questions so certified, instructed the said Assessor as to how the property should be treated, issuing to said Assessor certain instructions, copy of which is filed herewith as Exhibit F and prayed to be read and taken as part of this petition.

X

Petitioner further shows that all the proceedings heretofore taken have been taken in compliance with and pursuant to the provisions of said Chapter 41.

XI

Petitioner respectfully shows that it is aggrieved by the assessment made by the said Assessor as corrected by the

said State Tax Commissioner, and as grounds therefor respectfully says as follows:

A. That petitioner is a foreign corporation domiciled in the State of Delaware, under the laws of which State it was incorporated in the year 1920; that it is engaged in the manufacturing of steel products; that it is qualified to do business in the State of West Virginia, holding real and tangible personal property in Brooke, Ohio, Marshall and Mason Counties, West Virginia, and having general offices in Wheeling, Ohio County, West Virginia. Petitioner is further qualified to do and is doing business in the States of Minnesota and Ohio, where it also owns real and tangible personal property, over sixty per cent of all of its real and tangible personal property being situate in said State of Ohio, in which State it manufactures, sells and ships at least seventy-five per cent of all the articles manufactured by it in all States. It has various sales offices situate in various States in the United States.

B. In returning for taxation as hereinbefore set out the Item of $312,729.00 as cash, the amount thereof was returned by petitioner upon advice of counsel and repre- [fol. 27] sented the amount of cash situate in banks located in the State of West Virginia on January 1, 1933, derived from sales by petitioner in West Virginia, said amount being determined from the books of petitioner by allocating to West Virginia so much of its total amount of cash as the amount of sales in West Virginia bore to the total amount of sales in all locations.

C. The amount returned by petitioner under Item 6 of its said return, to-wit, the amount of $72,310.00, was the amount of money less reserve for bad debts due the taxpayer from persons, firms or corporations residents of West Virginia.

D. Petitioner says that on January 1, 1933, the bank deposits in West Virginia banks amounted to $849,161.99, of which all were deposited in Ohio County, West Virginia, banks except the sum of $5,217.96 deposited in a bank in Brooke County, West Virginia; that it had bank deposits in the State of Ohio on said date amounting to $204,733.20; that it had bank deposits located in the State of Pennsylvania on said date amounting to $660,626.25; that it had

bank deposits located in the State of New York on said date amounting to $589,599.04; that it had bank deposits situate in the State of Illinois on said date amounting to $3,653.13. Such deposits represented monies received by petitioner in the operation of its business, excepting as hereinbefore set forth in paragraph B above, from products manufactured by petitioner in the State of Ohio and sold to persons other than residents of the State of West Virginia. Petitioner says that the jurisdiction, if any, to tax all or any of such bank deposits is at the domicile of petitioner in the State of Delaware, and that West Virginia lacks jurisdiction to tax such or any of such bank deposits.

E. That the assessment by the Assessor (and the Tax Commissioner) of petitioner's bank deposits wherever located, is invalid, is an interference with interstate commerce, results in double taxation, is unconstitutional and the taxing thereof is a taking of property without due pro-[fol. 28] cess of law, and contrary to the Constitution of the United States and the Constitution and laws of the State of West Virginia.

XII

Petitioner respectfully shows that the assessment by the Assessor, as corrected by the State Tax Commissioner, of its accounts receivable is invalid and for grounds therefor respectfully shows as follows:

A. That excepting as to the amount returned by petitioner, to-wit, the amount of $72,310.00, said accounts receivable are due from debtors of petitioner resident in states other than West Virginia and representing sales by petitioner to such debtors of goods manufactured outside the State of West Virginia and shipped by petitioner from such outside points to the purchasers thereof likewise resident outside the State of West Virginia.

B. Said accounts receivable, excepting as returned by petitioner, are not taxable in West Virginia and West Virginia has no jurisdiction over the same. Nor does West Virginia have control of said accounts receivable or the persons owing the same to petitioner, or any control of the manufactured articles represented by such accounts as were manufactured in plants located outside the State

of West Virginia and shipped to points outside of such State.

C. The domicile of petitioner being in Delaware, such accounts receivable are intangible personal property and not subject to the jurisdiction of West Virginia.

D. West Virginia having no jurisdiction of said accounts, the assessment and taxing thereof is invalid, is an interference with interstate commerce, and contrary to the Constitution of the United States and the Constitution and laws of the State of West Virginia.

XIII

The assessment by the said Assessor as corrected by the Tax Commissioner of both monies and accounts receivable, [fol. 29] is further invalid for the reason that said Assessor proposes to assess said intangible personal property in Clay District, Ohio County, which is situate in the municipality of the City of Wheeling, Ohio County, West Virginia, and the rate of tax laid thereon will be the rate provided for by Chapter 38 of the Acts of the Legislature of West Virginia, regular session, 1933, being House Bill No. 314, under the provisions whereof a greater rate of tax would be levied upon said property than the rate levied against similar property situate outside of said City of Wheeling, all contrary to the provisions of Section 1, Article 10, of the Constitution of West Virginia, contrary to the provisions of the Constitution of the United States, and is discriminatory, a taking of property without due process of law, and denying to petitioner the equal protection of the law.

XIV

Petitioner further respectfully says that the Assessor and the State Tax Commissioner in refusing to permit petitioner to take the deductions claimed as set forth in its return on account of indebtedness showing as of January, 1933, erred; that the provisions of Chapter 38 of the Acts of Legislature, State of West Virginia, extraordinary session, 1933, passed May 25, 1933, amending Section 12, Article 3, Chapter 11 of the Code of West Virginia, 1931, are invalid.

XV

And for other grounds petitioner says the assessment as made by the said Assessor and as corrected by the Tax Commissioner, is invalid and unconstitutional.

XVI

Petitioner says that the Board of Commissioners of Ohio County sat at a Board of Review and Equalization, and adjourned its hearing as such Board of Review on or about July 31, 1933, and that your petitioner is filing this peti- [fol. 30] tion within thirty days from the time of such adjournment.

Wherefore, petitioner respectfully says that such property is not taxable and the laws with respect thereto are invalid, and therefore prays that an appeal be granted by this Honorable Court, and that the matters be heard de novo by this Honorable Court; that upon such hearing this Court find that the property has been illegally assessed and that such assessment be corrected and that your petitioner be granted such other and further relief to which it may be entitled.

And it will ever pray, etc.

Wheeling Steel Corporation, by Wright Hugus, J. E. Bruce, Its Attorneys. Wright Hugus, J. E. Bruce, Its Attys.

EXHIBIT "A" TO PETITION

S. T. C. O. Form No. 3—Tax Return

To Karl G. Sailer, Assessor of Ohio County:

Annual Tax Return of Wheeling Steel Corporation, a Corporation, for the Assessment Year beginning January 1, 1933.

1. Incorporated under the laws of the State of Delaware.
2. Location of Principal Office Wilmington, Delaware.
3. Location of Chief Place of Business Wheeling, W. Va.

* 5. Authorized Capital Stock $100,000,000.

---

* NOTE.—The capital stock reported above is not to be entered in the Personal Property Book.

6. Name and address of President W. W. Holloway, Wheeling, W. Va.

7. Name and address of Secretary H. P. Beswick, Wheeling, W. Va.

[fol. 31] This is a Foreign Corporation authorized by law to do business in West Virginia.

Tangible Personal Property

14. Store Goods and Merchandise—inventory val.	
15. Store Fixtures and Equipment.	
16. Office Furniture, Fixtures and Equipment.	
Amount carried forward to next column $84600	84600
Amount brought forward	$84600
31. Manufactured articles on hand	22300
32. All articles purchased, received or otherwise held for the purpose of being used in whole or in part in any process or operation of manufacturing, combining, rectifying, or refining	24800
Total value of Tangible Personal property	$131700

Money, Bonds, Credits and Investments

	Value by Company Whole Dollars
1. The amount of money on hand, and all deposits in banks, trust companies, or with any corporation, firm or individual, in this or any other state or country, on the first day of January	$312729
6. Amount of all notes, book accounts and accounts receivable not secured by mortgage whether debtors reside in West Virginia or elsewhere	72310
Total amount of money, bonds, credits and investments (Except U. S. Government Bonds)	$385039

[fol. 32] * Debts Owing January First—Deduction Claimed

(Indebtedness Must be Itemized)

To whom owing, American Rolling Mill Co.
Form of Debt, Note.
Date of Debt, 1-1-30.
Date Note Due, 1-1-34.
Amount, $250000.
Miscellaneous Accounts Payable $249010.
4½% and 5½% Bonds outstanding in hands of public $27241000.
Total $27740010.

* NOTE.—Debts must be bona fide and owing on January first, and are deductible only from money, bonds, credits and investments.

STATE OF WEST VIRGINIA,
County of Ohio, to-wit:

I, H. P. Beswick, Secretary of the Wheeling Steel Corporation, do solemnly swear (or affirm) that the foregoing is, to the best of my knowledge and judgment, true in all respects; that it contains a statement of all the real estate and personal property, including moneys, leaseholds, credits and investments belonging to said corporation; that the valuation affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and that said corporation has not, to my knowledge, since the first day of the assessment year, converted any of its assets into non-taxable securities for the purpose of evading the assessment of taxes thereon; so help me God.

—— ——.

[fol. 33] Subscribed and sworn to before me this 16th day of May, 1933. —— ——, Notary Public.

EXHIBIT "B" TO PETITION

To the Honorable Karl G. Sailer, Assessor of Ohio County, West Virginia:

Wheeling Steel Corporation, a corporation, hereby objects to and protests against the assessment by you of certain items appearing in this corporation's tax return for the year 1933 and being Items 1 and 6 of such return, wherein you raised the valuation of Item 1 "Cash * * *" from the valuation of $312,729 as reported by the undersigned to $2,517,450 and also raised Item 6 "Accounts Receivable * * *" from the valuation of $72,310, as reported by the undersigned, to $2,446,500. Taxpayer's objections to and protests against the re-valuation are based upon the following:

I

The amount of cash ($312,729) returned by taxpayer was the amount of cash in banks situate on January 1, 1933, in West Virginia, derived from West Virginia business upon an allocation-of-business basis. The amount assessed for this item by the Assessor ($2,517,450) includes cash on deposit to the credit of taxpayer, or its subsidiaries, in banks situate outside the State of West Virginia. In assessing this additional amount against taxpayer, the Assessor is including the following items of cash belonging to the Companies indicated and deposited as indicated, all as follows:

(a) Luzerne Mercantile Company, a Pennsylvania Corporation, with its principal place of business in Harmarville, Allegheny County, Pennsylvania, doing business in Brooke County, West Virginia, but not in Ohio County. On January 1, 1933, this Company had a total of $14,353.09 in cash, of which $12,522.83 was on deposit in Ohio County, [fol. 34] West Virginia, and the balance was on deposit outside of Ohio County. Said Luzerne Mercantile Company reported to the Assessor of Brooke County, West Virginia, of such total sum, the sum of $4,421.00 as being taxable in Brooke County. The balance of said cash was derived from business outside of West Virginia.

(b) Said amount assessed by the Assessor against taxpayer included the sum of $21,541.52 belonging to Wheel-

ing Steel Corporation of Texas, a Texas corporation, with its principal place of business in Texas. This sum was on deposit in banks in Ohio County, West Virginia, to the credit of said Wheeling Steel Corporation of Texas.

(c) Said total sum likewise included the sum of $22,694.67 belonging to Wheeling Steel Corporation of Tennessee, a Tennessee Corporation, with its principal place of business in Memphis, Tennessee. This sum was on deposit to the credit of said Wheeling Steel Corporation of Tennessee in Ohio County, West Virginia, banks.

(d) Said sum also included the sum of $4,053.74 belonging to the Consumers Mining Company, a Pennsylvania Corporation, with its principal place of business in Harmarville, Allegheny County, Pennsylvania. All of said sum was on deposit in a bank or banks in Pittsburgh, Pennsylvania.

(e) Said sum also included the sum of $733.34 belonging to the Benwood & Wheeling Connecting Railway Company, a West Virginia Corporation, with its principal office in Marshall County, West Virginia. Said sum was on deposit to the credit of said Benwood & Wheeling Connecting Railway Company in banks in Ohio County, West Virginia, but said corporation being a railroad company, is required to make a return of its properties for assessment purposes direct to the State of West Virginia.

(f) Said sum likewise included the amount of $2812.60 belonging to Expanded Metal Products, Inc., a New York Corporation, doing business solely in New York, in which state said sum was deposited in banks.

[fol. 35] (g) Said sum likewise included the amount of $5520.07, the property of Fabricated Steel Products Company, a West Virginia Corporation, with its principal office in Marshall County, West Virginia, to the Assessor of which County said Company reported its cash subject to taxation. Said sum was deposited in banks in Ohio County, West Virginia.

(h) Said sum likewise included the amount of $281.61 being a special fund to the credit of Trustees and Sinking Fund Agents under a mortgage of taxpayer and on deposit in New York City, New York.

II

The bank deposits of taxpayer as of January 1, 1933, were as follows: In Ohio County, West Virginia, Banks: $849,161.99. Banks situate in the State of Ohio: $204,-733.20. Banks situate in the State of Pennsylvania: $660,-626.55. Banks situate in the State of New York: $589,-599.04. Banks situate in the State of Illinois: $3,653.13. Of the amount on deposit in West Virginia banks, taxpayer in its return reported such amount as had been received from and allocated upon business carried on in West Virginia, it being advised by counsel so to report. The balance of said cash deposited in West Virginia banks was derived from and allocated upon the basis for business done outside of West Virginia.

III

The item of Accounts Receivable, $72,310 as returned by the taxpayer was the amount, less bad debts, due the taxpayer from persons, firms or corporations residents of West Virginia. The Assessor's valuation of $2,446,500, less bad debts, included the following amounts which were due to subsidiaries of taxpayer, all as follows:

(a) The amount of $8,637.18 due the Luzerne Mercantile Company, a Pennsylvania Corporation, doing business in Brooke County, West Virginia. Of this amount $6,900 was reported to the Assessor of Brooke County, West Virginia, [fol. 36] by said Luzerne Mercantile Company. The balance of said accounts was due from persons other than residents of West Virginia from business transacted outside the State of West Virginia and said Luzerne Mercantile Company was advised that it was not required to report the same.

(b) The amount of $17,168.38 due the Tyler Tube & Pipe Company, a Pennsylvania Corporation, not doing business in West Virginia.

(c) The amount of $958.17 due the Benwood & Wheeling Connecting Railway Company, doing business in Marshall County, West Virginia, the tax return thereof being required under law to be otherwise made.

(d) The amount of $19,167.99 due the Consumers Mining Company, a Pennsylvania Corporation, doing business

solely in Harmarville, Allegheny County, Pennsylvania, and Pike County, Ky.

(e) The amount of $129,858.35 due the Wheeling Steel Corporation of Tennessee, a Tennessee Corporation, doing business solely at Memphis, Tennessee, or in interstate commerce.

(f) The amount of $33,061.24 due the Wheeling Steel Corporation of Texas, a Texas Corporation, doing business solely in the State of Texas, or in interstate commerce.

(g) The amount of $8,934.54 due the Fabricated Steel Products Company, a West Virginia Corporation, doing business in Marshall County. Of this amount said Fabricated Steel Products Company returned $7,185 to the Assessor of Marshall County as being taxable. The balance thereof the said Company had allowed for bad debts.

(h) The amount of $5,798.07 due the Expanded Steel Products, Inc., a New York Corporation, doing business solely in New York City.

(i) The amount of $21,200 deposited by Wheeling Corrugating Company, a subsidiary of taxpayer, to the credit of individuals in states other than West Virginia.

(j) The amount of $155,311 which is the amount of ad-[fol. 37] vance payments made by taxpayer to owners and sellers of iron ore for the purchase of iron ore, the delivery of which had not been as yet received on January 1, 1933. The taxpayer was advised that this was not taxable property situate in West Virginia. It represented no account receivable of any person, taxpayer having the right under its contract with said sellers of ore, to receive under the terms of the contract, iron ore.

(k) The amount of $59,676 which was the amount due from employees of taxpayer for capital stock of taxpayer sold to its employees under a stock subscription plan, prior to January 1, 1933.

IV

The balance of the Assessor's valuation of Accounts Receivable, represents amounts due for goods manufactured by taxpayer in States other than West Virginia and shipped to taxpayer's customers living in places not situ-

ate in West Virginia. Taxpayer in making its return was advised by counsel that such accounts receivable need not be reported as they were not properly taxable in Ohio County, West Virginia, and reported only such amounts as were due from West Virginia customers as hereinbefore set forth.

V

Taxpayer is a Delaware Corporation, with its principal office in Wilmington, Delaware, having a business office in Wheeling, West Virginia, in which State it is qualified to do business as a foreign corporation. It makes all reports and returns required by the State of Delaware for a corporation domesticated in that State. It has manufacturing plants situate in Ohio and West Virginia, the larger number of which is situate in the State of Ohio. It has various sales offices located throughout the United States, the larger part of its goods being shipped in interstate commerce.

[fol. 38] In view of the matters hereinbefore set forth, taxpayer objects to and protests against the assessment and valuation made and fixed by the Assessor and assigns, among other, the following reasons therefor:

1. Taxpayer is domiciled in Delaware. Bank accounts and accounts receivable are intangible personal property, having a situs at the domicile of the owner, which in this case is Delaware.

2. Bank accounts located in points outside of West Virginia have no situs in West Virginia and West Virginia lacks jurisdiction to assess and tax such bank deposits. As to accounts in West Virginia, taxpayer protests against any assessment thereof on the ground that their situs is also at the domicile of corporation in Delaware.

3. The accounts receivable representing goods manufactured in plants other than those in West Virginia and shipped to points other than those in West Virginia, have no situs in West Virginia for taxation purposes and West Virginia has no jurisdiction over the same. Their *suits* is at the domicile of the corporation—Delaware.

4. West Virginia has neither jurisdiction nor control of the accounts receivable from persons living outside of West Virginia (nor does it have jurisdiction or control in

any way of so much of the manufactured articles represented by the accounts receivable as were manufactured in plants located outside West Virginia and shipped to points outside of West Virginia). Nor as to such accounts does the State of West Virginia have jurisdiction over the debtors by whom such accounts are owed.

5. In so far as the Assessor has included accounts receivable representing shipments from, and to, points outside of West Virginia, the assessment of such accounts is an interference with inter-state commerce and prohibited by the Constitution of the United States.

6. The attempted assessment and taxation of the bank accounts and accounts receivable located outside of West Virginia would result in double taxation.

[fol. 39] 7. Provisions of the law attempting to tax such intangible property of a corporation are unconstitutional and the taxing thereof is an interference with inter-state commerce, results in double taxation, ignores the general provision of the law with reference to the situs of property for taxation, is otherwise invalid, unconstitutional, is a taking of property without due process of law, and contrary to the constitution of the United States and amendments thereof.

8. Taxpayer with an indebtedness as of January 1, 1933, far in excess of the value of its intangible properties both as reported by it and as fixed by the Assessor, should be permitted to set off such indebtedness against its intangible property as provided in Section 12 of Article 3, Chapter 11 of the 1931 Code of West Virginia.

9. The provisions of an Act of the Legislature, being House Bill No. 314 passed at the 1933 Session of the State Legislature providing for a rate of tax on "money * * * and accounts receivable" owned by taxpayer resident in municipalities greater than the rate on the same class of property situate outside of municipalities, is invalid, discriminatory and unconstitutional, and is taking of property without due process of law, and contrary to the constitution of the United States and amendments thereto.

These objections and protests are filed under the provisions of Section 24(a) of an Act of the Legislature, being

House Bill No. 554 passed at the 1933 session of the State Legislature, relating to the Review of Assessments.

Respectfully submitted, Wheeling Steel Corporation, by R. D. Swinburne, Comptroller.

EXHIBITS "C" AND "E" TO PETITION

July 14, 1933.

Wheeling Steel Corporation, Wheeling, West Virginia.

[fol. 40] GENTLEMEN:

In answer to the Objections and Protests of the Wheeling Steel Corporation, filed with this office, on the 12th day of July, 1933:

It is the opinion of this department, that the Objections noted in Section 1, Paragraphs A, B, C, D, E, F, G and H in Section 2, with reference to the amount of cash on deposit in banks in this state and other states, for which this office assessed the Wheeling Steel Corporation $2,380,300.00, said Protest should be and is hereby disallowed for the reason that this cash is subject to the Corporation's checks and drafts and is a proper item for taxation in this state; giving as our authority, Section 12, Article 3, Chapter 11, of the 1931 Official Code of the State of West Virginia.

It is the opinion of this department that section 3, paragraphs A, B, C, D, E, F, G, H and I, of your Protest, should be and is hereby disallowed for the reason that said Accounts Receivable as assessed by our department in the amount of $2,399,000.00, are included as an asset of the Wheeling Steel Corporation and are so indicated in the 13th annual report of the Wheeling Steel Corporation, for the fiscal year ended December 31, 1932; citing our authority in Section 12, Article 3, Chapter 11, of the Official Code of West Virginia, 1931.

The objections set forth in Section 3, Paragraph J, protesting against the assessment in the amount of $155,311, as made by this department, should be and are hereby disallowed for the reason that this item is an asset of the Corporation and is so indicated in the 13th Annual Report of

the Wheeling Steel Corporation, for the fiscal year ended December 31, 1932; citing as our authority Section 12, Article 3, Chapter 11, of the Official Code of the State of West Virginia, 1931.

The Objection set forth in Section 3, Paragraph K, against the assessment as made by this department in the amount of $59,676.99, for an account due from employees, under the stock purchase plan, should be and is hereby [fol. 41] disallowed for the reason that this amount is an asset of the Corporation and is so indicated in the 13th Annual Report of the Wheeling Steel Corporation, for the fiscal period ended December 31, 1932; citing as our authority, Section 12, Article 3, Chapter 11, of the Official Code of West Virginia, 1931.

With reference to the protest set forth in Section 4, in regard to the balance of the assessed valuation of Accounts Receivable, as made by this department, the protest should be and is hereby disallowed for the reason that said Accounts Receivable are a part of the assets of the Wheeling Steel Corporation and are so indicated and set forth in the 13th Annual Report of the Wheeling Steel Corporation, for the fiscal period ended December 31, 1932; citing as our authority Secti-n 12, Article 3, Chapter 11, of the Official Code of West Virginia, 1931.

With reference to the Protest in Section 5, Paragraphs 1, 2, 3, 4, 5, 6 and 7, this department is of the opinion that the Wheeling Steel Corporation has its chief place of business in the City of Wheeling, State of West Virginia, and is required by law to make its return of tangible and intangible property to the Assessor at Ohio County, Wheeling, West Virginia; for this reason said Protest should be and is hereby disallowed citing as our authority, Section 12, Article 3, Chapter 11, of the Official Code of the State of West Virginia, 1931.

With reference to the protest set forth in Section 5, Paragraph 8, this department is of the opinion, that Corporations are not entitled to deductions on account of indebtedness, as against their intangible assets, under the laws that now exist. The statute permitting deductions under the 1931 Code was Section 6, Article 5, Chapter 11, and this section having been entirely omitted from House Bill No. 408, there is clearly no right to deductions on the part of Corporations.

With reference to the Protest set forth in Section 5, Paragraph 9, this department is of the opinion that this [fol. 42] Protest is in error wherein the Protest, it is assumed that the rate of tax on moneys and accounts receivable owned by Taxpayer Residents in Municipalities is greater than the rate on the same class of property situated outside of Municipalities, but in the event that this department's opinion should be wrong with reference to this question and the Petitioner's opinion right this department still maintains that said Protest should be and hereby is disallowed, for the reason that House Bill No. 314 is an Act of the Legislature of 1933 Session and this office is guided in accordance with such acts.

Be it more clearly understood that all Objections and Protests set forth in the Petition of the Wheeling Steel Corporation should be and are hereby disallowed.

Respectfully submitted, (Signed) Karl G. Sailer, Assessor of Ohio County.

Subscribed and sworn to before me this 19th day of July 1933. (Signed) A. B. Creighton, Notary Public in and for Ohio County, W. Va. My Commission Expires March 28, 1933.

EXHIBIT "D" TO PETITION

Statement of Taxpayer, Wheeling Steel Corporation, under Section 24 (a)

To the Honorable Karl G. Sailer, Assessor of Ohio County, West Virginia:

Wheeling Steel Corporation, a corporation, hereby objects to and protests against the assessment by you of certain items appearing in this corporation's tax return for the year 1933 and being Items 1 and 6 of such return, wherein you raised the valuation of Item 1 "Cash * * *" [fol. 43] from the valuation of $312,729 as reported by the undersigned to $2,517,450 and also raised Item 6 "Accounts Receivable * * *" from the valuation of $72,310, as reported by the undersigned, to $2,446,500. Taxpayer's objections — — protests against the revaluation are based upon the following:

I

The amount of cash ($312,729) returned by taxpayer was the amount of cash in banks situate on January 1, 1933, in West Virginia, derived from West Virginia business upon an allocation-of-business basis. The amount assessed for this item by the Assessor ($2,517,450) includes cash on deposit to the credit of taxpayer, or its subsidiaries, in bank situate outside the State of West Virginia. In assessing this additional amount against taxpayer, the Assessor is including the following items of cash belonging to the Companies indicated and deposited as indicated, all as follows:

(a) Luzerne Mercantile Company, a Pennsylvania Corporation, with its principal place of business in Harmarville, Allegheny County, Pennsylvania, doing business in Brooke County, West Virginia, but not in Ohio County. On January 1, 1933, this Company had a total of $14,353.09 in cash, of which $12,522.83 was on deposit in Ohio County, West Virginia, and the balance was on deposit outside of Ohio County. Said Luzerne Mercantile Company reported to the Assessor of Brooke County, West Virginia, of such total sum, the sum of $4,421.00 as being taxable in Brooke County. The balance of said cash was derived from business outside of West Virginia.

(b) Said amount assessed by the Assessor against taxpayer included the sum of $21,541.52 belonging to Wheeling Steel Corporation of Texas, a Texas corporation, with its principal place of business in Texas. This sum was on [fol. 44] deposit in banks in Ohio County, West Virginia, to the credit of said Wheeling Steel Corporation of Texas.

(c) Said total sum likewise included the sum of $22,694.67 belonging to Wheeling Steel Corporation of Tennessee, a Tennessee Corporation, with its principal place of business in Memphis, Tennessee. This sum was on deposit to the credit of said Wheeling Steel Corporation of Tennessee in Ohio County, West Virginia, banks.

(d) Said sum also included the sum of $4,053.74 belonging to the Consumers Mining Company, a Pennsylvania Corporation, with its principal place of business in Harmarville, Allegheny County, Pennsylvania. All of said sum

was on deposit in a bank or banks in Pittsburgh, Pennsylvania.

(e) Said sum also included the sum of $733.34 belonging to the Benwood & Wheeling Connecting Railway Company, a West Virginia Corporation, with its principal office in Marshall County, West Virginia. Said sum was on deposit to the credit of said Benwood & Wheeling Connecting Railway Company in banks in Ohio County, West Virginia, but said corporation being a railroad company, is required to make a return of its properties for assessment purposes direct to the State of West Virginia.

(f) Said sum likewise included the amount of $2,812.60 belonging to Expanded Metal Products, Inc., a New York Corporation, doing business solely in New York, in which state said sum was deposited in banks.

(g) Said sum likewise included the amount of $5,520.07, the property of Fabricated Steel Products Company, a West Virginia Corporation, with its principal office in Marshall County, West Virginia, to the Assessor of which County said Company reported its cash subject to taxation. Said sum was deposited in banks in Ohio County, West Virginia.

(h) Said sum likewise included the amount of $281.61 being a special fund to the credit of Trustees and Sinking [fol. 45] Fund Agents under a mortgage of taxpayer and on deposit in New York City, New York.

II

The bank deposits of taxpayer as of January 1, 1933, were as follows: In Ohio County, West Virginia, Banks: $849,161.99. Banks situate in the State of Ohio: $204,733.20. Banks situate in the State of Pennsylvania: $600,625.25. Banks situate in the State of New York: $589,599.04. Banks situate in the State of Illinois: $3,653.13. Of the amount on deposit in West Virginia banks, taxpayer in its return reported such amount as had been received from and allocated upon business carried on in West Virginia, it being advised by counsel so to report. The balance of said cash deposited in West Virginia banks was derived from and allocated upon the basis for business done outside of West Virginia.

III

The item of Accounts Receivable, $72,310 as returned by the taxpayer was the amount, less bad debts, due the taxpayer from persons, firms or corporations residents of West Virginia. The Assessor's valuation of $2,446,500, less bad debts, included the following amounts which were due to subsidiaries of taxpayer, all as follows:

(a) The amount of $8,637.18 due the Luzerne Mercantile Company, a Pennsylvania Corporation, doing business in Brooke County, West Virginia. Of this amount $6,900 was reported to the Assessor of Brooke County, West Virginia, by said Luzerne Mercantile Company. The balance of said accounts was due from persons other than residents of West Virginia from business transacted outside the State of West Virginia and said Luzerne Mercantile Company was advised that it was not required to report the same.

(b) The amount of $17,168.38 due the Tyler Tube & Pipe Company, a Pennsylvania Corporation, not doing business in West Virginia.

(c) The amount of $958.17 due the Benwood & Wheel-[fol. 46] ing Connecting Railway Company, doing business in Marshall County, West Virginia, the tax return thereof being required under law to be otherwise made.

(d) The amount of $19,167.99 due the Consumers Mining Company, a Pennsylvania Corporation, doing business solely in Harmarville, Allegheny County, Pennsylvania, and Pike County, Ky.

(e) The amount of $129,858.35 due the Wheeling Steel Corporation of Tennessee, a Tennessee Corporation, doing business solely at Memphis, Tennessee, or in interstate commerce.

(f) The amount of $33,061.24 due the Wheeling Steel Corporation of Texas, a Texas Corporation, doing business solely in the State of Texas, or in interstate commerce.

(g) The amount of $8,934.54 due the Fabricated Steel Products Company, a West Virginia Corporation, doing business in Marshall County. Of this amount said Fab-

ricated Steel Products Company returned $7,185 to the Assessor of Marshall County as being taxable. The balance thereof the said Company had allowed for bad debts.

(h) The amount of $5,798.07 due the Expanded Steel Products, Inc., a New York Corporation, doing business solely in New York City.

(i) The amount of $21,200 deposited by Wheeling Corrugating Company, a subsidiary of taxpayer, to the credit of individuals in states other than West Virginia.

(j) The amount of $155,311 which is the amount of advance payments made by taxpayer to owners and sellers of iron ore for the purchase of iron ore, the delivery of which had not been as yet received on January 1, 1933. The taxpayer was advised that this was not taxable property situate in West Virginia. It represented no account receivable of any person, taxpayer having the right under its contract with said sellers of ore, to receive under the terms of the contract, iron ore.

(k) The amount of $59,676 which was the amount due [fol. 47] from employees of taxpayer for capital stock of taxpayer sold to its employees under a stock subscription plan, prior to January 1, 1933.

IV

The balance of the Assessor's valuation of Accounts Receivable, represents amounts due for goods manufactured by taxpayer in States other than West Virginia and shipped to taxpayer's customers living in places not situate in West Virginia. Taxpayer in making its return was advised by counsel that such accounts receivable need not be reported as they were not properly taxable in Ohio County, West Virginia, and reported only such amounts as were due from West Virginia customers as hereinbefore set forth.

V

Taxpayer is a Delaware Corporation, with its principal office in Wilmington, Delaware, having a business office in Wheeling, West Virginia, in which State it is qualified to do business as a foreign corporation. It makes all reports and returns required by the State of Delaware for

a corporation domesticated in that State. It has manufacturing plants situate in Ohio and West Virginia, the larger number of which is situate in the State of Ohio. It has various sales offices located throughout the United States, the larger part of its goods being shipped in interstate commerce.

In view of the matters hereinbefore set forth, taxpayer objects to and protests against the assessment and valuation made and fixed by the Assessor and assigns, among other, the following reasons therefor:

1. Taxpayer is domiciled in Delaware. Bank accounts and accounts receivable are intangible personal property, having a situs at the domicile of the owner, which in this case is Delaware.

2. Bank accounts located in points outside of West Virginia have no situs in West Virginia and West Virginia [fol. 48] lacks jurisdiction to assess and tax such bank deposits. As to accounts in West Virginia, taxpayer protests against any assessment thereof on the ground that their situs is also at the domicile of corporation in Delaware.

3. The accounts receivable representing goods manufactured in plants other than those in West Virginia and shipped to points other than those in West Virginia, have no situs in West Virginia for taxation purposes and West Virginia has no jurisdiction over the same. Their suits is at the domicile of the corporation—Delaware.

4. West Virginia has neither jurisdiction nor control of the accounts receivable from persons living outside of West Virginia (nor does it have jurisdiction or control in any way of so much of the manufactured articles represented by the accounts receivable as were manufactured in plants located outside West Virginia and shipped to points outside of West Virginia). Nor as to such accounts does the State of West Virginia have jurisdiction over the debtors by whom such accounts are owed.

5. In so far as the Assessor has included accounts receivable representing shipments from, and to, points outside of West Virginia, the assessment of such accounts is an interference with inter-state commerce and prohibited by the Constitution of the United States.

6. The attempted assessment and taxation of the bank accounts and accounts receivable located outside of West Virginia would result in double taxation.

7. Provisions of the law attempting to tax such intangible property of a corporation are unconstitutional and the taxing thereof is an interference with inter-state commerce, results in double taxation, ignores the general provision of the law with reference to the situs of property for taxation, is otherwise invalid, unconstitutional, is a taking of property without due process of law, and contrary to the constitution of the United States and amendments thereof.

8. Taxpayer with an indebtedness as of January 1, 1933, [fol. 49] far in excess of the value of its intangible properties both as reported by it and as fixed by the Assessor, should be permitted to set off such indebtedness against its intangible property as provided in Section 12 of Article 3, Chapter 11 of the 1931 Code of West Virginia.

9. The provisions of an Act of the Legislature, being House Bill No. 314 passed at the 1933 Session of the State Legislature providing for a rate of tax on "money . . . and accounts receivable" owned by taxpayer resident in municipalities greater than the rate on the same class of property situate outside of municipalities, is invalid, discriminatory and unconstitutional, and is a taking of property without due process of law, and contrary to the constitution of the United States and amendments thereto.

These objections and protests are filed under the provisions of Section 24(a) of an Act of the Legislature, being House Bill No. 554 passed at the 1933 session of the State Legislature, relating to the Review of Assessments.

Respectfully submitted, Wheeling Steel Corporation,
by R. D. Swinburne, Comptroller.

STATE OF WEST VIRGINIA,
County of Ohio, ss:

Before me, J. E. Bruce, a Notary Public of the said County of Ohio, personally appeared R. D. Swinburne, who, being by me first duly sworn, says: that he is Comptroller of Wheeling Steel Corporation, the protestants in the foregoing objections and protests; that the facts and allegations therein contained are true.

R. D. SWINBURNE.

Taken, sworn to and subscribed before me this 24th day of July, 1933. J. E. Bruce, Notary Public. My Commission expires March 13, 1935.

[fol. 50] EXHIBIT "F" TO PETITION.

In the matter of the Application of WHEELING STEEL CORPORATION to be Exempted from the Payment of Taxes on Certain Intangible Personal Properties Assessed in its Name by the Assessor of Ohio County.

On this 31st day of July, 1933, there has been filed before the undersigned Fred L. Fox, State Tax Commissioner of the State of West Virginia, the objection of the Wheeling Steel Corporation to the assessment of certain of its intangible personal property as fixed by the Assessor of Ohio County, and it is asked that such property be held to be exempted from taxation on the various grounds set out in its objection hereto; and there is also filed the objection of Karl G. Sailer, Assessor of Ohio County, to the request of Wheeling Steel Corporation aforesaid. The objection of the said Wheeling Steel Corporation and the answer thereto filed by the said Karl G. Sailer, Assessor, are supported by affidavits as required by law.

The question of the assessment of the said property submitted to the undersigned comes under the provisions of Section 24(a), Article 3, Chapter 11, of the Code, as enacted by House Bill 554 at the regular session of the Legislature of West Virginia, 1933.

On consideration of the objection filed by the said Wheeling Steel Corporation to the assessment of its property, the answer and objection of the Assessor of Ohio County thereto, upon all the papers filed with the said papers and affidavits, it is held that the sum of $14,353.09 in the name of the Luzerne Mercantile Company, the sum of $21,541.52 deposited in the name of the Wheeling Steel Corporation of Texas, a Texas corporation, the sum of $32,694.60 deposited in the name of the Wheeling Steel Corporation of Tennessee, a Tennessee corporation, the sum of $4,053.74 deposited in the name of Consumers Mining Company of Pennsylvania, a corporation, the sum of $733.34 deposited in the name of the Benwood and Wheeling Connecting Railway

[fol. 51] Company, the sum of $2,812.60 deposited in the name of the Expanded Metal Products Company of New York, the sum of $5,520.07 deposited in the name of the Fabricated Steel Products Corporation, a corporation, the sum of $821.61 deposited to the credit of trustees in the sinking fund of New York, representing cash included in the total assessment of $2,517,540.00, should be deducted from the amount of said assessment; and the said Wheeling Steel Corporation be assessed with the balance of cash held by it on the first day of January, 1933, wheresoever deposited.

It is further held that the assessment of $2,446,600.00 as accounts receivable, should be reduced in the following amounts, to-wit: the sum of $8767.18 due Luzerne Mercantile Company, the sum of $17,168.30 due the Tyler Tube and Pipe Company of Pennsylvania, a corporation, the sum of $958.17 due the Benwood and Wheeling Connecting Railway, the sum of $19,167.99 due the Consumers Mining Company of Pennsylvania, a corporation, the sum of $129,858.35 due the Wheeling Steel Corporation of Tennessee, a Tennessee Corporation, the sum of $33,061.24 due Wheeling Steel Corporation of Texas, a Texas Corporation, the sum of $8,934.54 due Fabricated Steel Products Company, the sum of $5798.07 due Expanded Steel Products of New York, a New York corporation, the sum of $21,200.00 deposited in the name of Wheeling Corrugating Company, in various banks located outside of West Virginia, the sum of $155,311.00 carried on the books as an account receivable, but in fact representing monies paid on tangible property located without the State of West Virginia; and the residue of said sum of $2,446,500.00 assessed to the said Wheeling Steel Corporation as Class 1 property, as defined by the constitution and statutes of the state.

It is further held that said Wheeling Steel Corporation is not entitled to deduct any sum of assessment herein held to be legal on account of any of its indebtedness existing on the first day of January, 1933.

[fol. 52] Given under my hand this 31st day of July, 1933.

—— ——, State Tax Commissioner.

To Karl G. Sailer, Assessor of Ohio County, Wheeling, West Virginia.

[File endorsement omitted]

IN CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of its Intangible Property by the Assessor of Ohio County, West Virginia, as Corrected by the Tax Commissioner of the State of West Virginia for the year 1933.

ORDER ALLOWING APPEAL, ETC.

On this 29th day of August, 1933, came Petitioner, Wheeling Steel Corporation, by Wright Hugus and J. E. Bruce, its attorneys, and it appearing that said Wheeling Steel Corporation had heretofore, to-wit, on the 26th day of August, 1933, filed its petition and accompanying exhibits for an appeal in the above matter with the Clerk of this Court, and it appearing that there are no objections to the filing of the same, it is hereby adjudged, or- [fol. 53] dered and decreed that said application be and it hereby is filed.

And it is further adjudged, ordered and decreed that said appeal be and it is hereby allowed.

Upon motion of said Petitioner, said application is now ordered to be docketed in this Court for hearing on the 11th day of September, 1933, at the next regular term of this Court.

It is further ordered that ten days notice of the hearing of said application shall be given to the Prosecuting Attorney of Ohio County, Wheeling, West Virginia, who shall give at least five days notice thereof to the State Tax Commissioner.

It is further ordered that service of a certified copy of this order upon the Prosecuting Attorney of Ohio County, West Virginia, at least ten days before the 11th day of September, 1933, shall be sufficient notice of the hearing of said application.

Given under my hand this 29th day of August, 1933.

J. B. Sommerville, Judge of the Circuit Court of Ohio County, West Virginia.

The clerk will please enter the above as a vacation order.

J. B. Sommerville, Judge, &c.

IN CIRCUIT COURT OF OHIO

ORDER TRANSFERRING CASE—Oct. 30, 1933

In the Matter of the WHEELING STEEL CORPORATION, a Corp., for Correction

Appeal from Ruling of Assessor

For reasons appearing to the Court, this case is by the Court transferred to Part I of this Court.

[fol. 54] IN CIRCUIT COURT OF OHIO COUNTY

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of its Intangible Property for the Year 1933 by the Assessor of Ohio County, West Virginia, as Corrected by the Tax Commissioner of the State of West Virginia

ORDER OF SUBMISSION—NOV. 27, 1933

On this 27th day of November, 1933, came the petitioner, Wheeling Steel Corporation, by J. E. Bruce and Wright Hugus, its attorneys, and as well came the State of West Virginia, County of Ohio, West Virginia, and the magisterial districts of said County by Donald A. McKee, Prosecuting Attorney of said County, and thereupon said parties tendered for filing an agreed statement of facts in this cause (parties not signing said statement herein in open Court, adopting the same as and for their own and each thereof), and agreed that the matters herein in controversy should be determined upon said statement of facts, being agreed by said parties that if witnesses were called by the respective parties, that said facts as set out in said statement would be testified to by the various witnesses called; and the parties hereto, by counsel, reserve the right to except to the materiality of any or all of the facts set out in said agreed statement of facts, and no party, by agreeing to said statement, waives any objection which might be interposed to the relevancy or materiality thereof.

And thereupon, upon joint motion of all of such parties, it is hereby adjudged, ordered and decreed that said agreed

statement of facts be, and it hereby is filed herein and the matters arising herein in this cause be and they are submitted thereon.

It is further adjudged, ordered and decreed that the taxpayer, the petitioner herein, Wheeling Steel Corporation, be given until December 1, 1933, to file a written brief upon its behalf, and that the other parties hereto be allowed ten [fols. 55-69] days from the time of the filing of said brief, to file a reply thereto; and further, that if said Wheeling Steel Corporation desires to answer said reply, it shall have given — days thereafter within which to file the same.

Agreed Statement of Facts

It is hereby agreed by and between the petitioner, Wheeling Steel Corporation, and the respondent, the State of West Virginia, that the following facts may be used in connection with the petition and exhibits filed in the above proceeding, the same as if said facts had been adduced as evidence upon hearing de novo before this Court as provided by statute, and the matter submittted thereon.

Agreed statement of facts omitted. Printed side page 2, ante.

[fols. 70-73] And at another day, to-wit: At a Circuit Court held for the County of Ohio, at the Court House of said County, on the 5th day of March, 1934, among others the following proceedings were had:

Judgment omitted. Printed side page 17, ante.

[fol. 74] In Circuit Court of Ohio County, West Virginia

In the Matter of the Appeal of the Wheeling Steel Corporation from the Assessment of Certain of its Intangible Property for the year 1933

Memorandum of Opinion

The opinion of this court in the matter of the petition of Fidelity Investment Association is handed down simultaneously with this one. The part of that opinion deal-

ing with the first two points there considered—the constitutionality of chapter 40 of the acts of 1933, regular session, and with its retroactive nature—is incorporated herein by reference.

Agreed Facts

Wheeling Steel Corporation is and has been since June 21, 1930, a Delaware corporation. Its principal office is in Wilmington, Delaware. The law of Delaware requires that its certificates of incorporation state the name of the county and city in which its principal office is to be located, and its certificate complies therewith. It was and is qualified to do business as a foreign corporation in West Virginia, Ohio and Minnesota. Its stock ledger and records are kept in New York City with duplicates in its principal office. Its general business offices are located in Wheeling, [fol. 75] West Virginia, and its stockholders' and directors' meetings are there held in conformity with Delaware law. Its general books and accounting records are there kept.

Petitioner maintains sales offices in Atlanta, Buffalo, Cincinnati, Detroit, New Orleans, Philadelphia, San Francisco, Boston, Chicago, Dallas, Los Angeles, California, St. Louis, Seattle, and New York. It has manufacturing plants and coal properties in both West Virginia and Ohio. It has iron ore properties in Minnesota and controls, through stock ownership, coal properties in Pennsylvania and Kentucky. The total valuation of its West Virginia property amounts to a little more than one-fourth of the value of all its property and the products of its West Virginia plants amount to a little less than one-fourth (in value) of all its products. In addition to these the corporation owns four steamboats, two motorships, eighty-five coal barges, six freight barges, registered at the Port of Pittsburgh and operating on the Allegheny, Ohio and Mississippi rivers, transporting coal and steel. It will thus be seen that the company has offices of one kind or another in fifteen states and owns property in four, aside from its subsidiary control and without regard to the services of its river fleet. No statement is found as to the number of states and countries with whose residents it transacts business and this is probably unimportant.

Employment office are maintained at each plant, payroll checks are issued at each plant and the payrolls are there made up and there distributed. They are likewise paid with funds on deposit in banks in localities where the plants are situated.

Sales contracts are negotiated and orders taken at all the offices above referred to. These contracts and orders are subject to acceptance or rejection at Wheeling. The plant at Portsmouth, Ohio, prepares complete invoices and mails them for all products shipped from that plant, together with bills of lading and shipping notices. All [fol. 76] other plants follow the same course except that the invoices are not completed with regard to the price of material described therein. These incomplete invoices are forwarded to Wheeling where they are completed and mailed to the customer. All invoices are payable in Wheeling. Most of the commercial accounts are paid by check issued in Wheeling. Dividends are paid from New York City from funds on deposit there, although, as indicated above, and of necessity, ordered and declared at the meetings held in Wheeling. The capital stock is transferable in both New York and Wheeling but registerable only in New York.

The company owns a large office building in Wheeling and occupies about forty-three per cent of it with its own officers and employees.

Petitioner filed its tax returns for the assessment year beginning January 1, 1933. This tax return showed cash in banks and on hand, $2,703,974.38. The cash shown in West Virginia banks was $849,161.99. The rest of the cash was distributed among Ohio, Pennsylvania, New York and Illinois. Petitioner returned for taxation as money on hand and on deposit $312,729. It arrived at this amount by taking the sum of West Virginia payrolls plus West Virginia purchases and dividing it by total payrolls plus total purchases and multiplying the quotient by total cash. In figures that formula appears as follows:

$$\frac{1,417,273.53—831,831.03}{8,738,237.77—7,864,102.40} \text{ X } 2,307,773.61—312,703.32$$

The amount of cash on hand on January 1 was not the same as that on hand December 31. There are, further,

certain specifications of deductions allowed and disallowed but they need not be considered at this time for reasons which are apparent later.

On other intangible the company reported the following:

[fol. 77] Accounts and notes receivable, less reserve	$2,377,848.00
Advance payments on ore contracts	155,311.00
Balance due from employes under stock purchase plan	59,676.00

After certain deductions of sums belonging to subsidiary companies, this amount was reduced to $2,446,500.00. (This was by the assessor, and again the disagreement on figures becomes immaterial). The agreement is that the property total of accounts and notes receivable on January 1, 1933, was $2,234,743.00.

Of this amount petitioner claims that it should be taxed, it at all, on only $72,310—the amount of money due from residents of West Virginia. Of this amount only $26,296.96 is due from residents of West Virginia for goods manufactured in West Virginia. It should further be mentioned that of the balance due from employees under stock purchase plan only $25,238.66 was owed by residents of West Virginia. This seems to cover the important part of the agreed statement, but other matters may be suggested in the course of the opinion.

Facts from Petition

Section XII, paragraph a of the petition, contains a statement that except for the amount of $72,310 the accounts receivable are due from debtors of petitioner resident in states other than West Virginia and representing sales by petitioner to such debtors of goods manufactured outside the state of West Virginia and shipped from such outside points to said non-resident purchasers. This statement is not in the agreed facts, but it is not controverted and, as it seems important, the court will consider it as true. In this connection it is further assumed without statement but as manifestly the only reasonable course that all goods manufactured by other plants wherever sold are shipped direct from those plants to the purchasers. In other words, the Wheeling branch does not operate as a

[fol. 78] store except insofar as its own manufactured goods are concerned.

Facts Added by Agreement of Counsel

As the practical application of the statute involved seems important, in view of the fact that the court is of opinion that except for the debts deductible section the statute is unchanged for our present purpose, the prosecutor, the assessor and one of counsel for petitioner were called into conference. It is agreed that throughout the past Wheeling Steel Corporation has consistently listed all of its money and all of its credits but without affirming or denying that they are subject to tax as its deductible indebtedness was always in excess of these items. It is understood that no attempt has hitherto been made to assess taxes on money or credits, although it is equally understood that the problem has never been presented—certainly not as far as petitioner is concerned.

The Statutes

The code of 1931, 11-3-12, provided, with omissions, the following:

"Each incorporated company having its principal office or chief place of business in this state, or owning property subject to taxation in this state, * * * shall annually, between the first day of the assessment year and the first day of May, make a written report * * * to the assessor of the county in which its principal office or chief place of business is situated, showing * * * (c) the amount of money on hand or on deposit anywhere subject to its check or draft, on the first day of the assessment year; (d) the amount of credits and investments other than its own capital stock held by it on said date, with their true and actual value; (e) * * * its real estate, and the magisterial district or districts in which it is located; (f) * * * its tangible property in each magisterial district in which it is located."

[fol. 79] Then followed the provision for report of deductible debts. The following section provides that the assessor "shall assess the value of all the property of such corporation liable to taxation."

It then provides that property from item (e) shall be entered in the land books and (c) and (d) in the personal property books in the magisterial district wherein is the principal office or chief place of business of the corporation, while item (f), the tangibles, shall be entered in their respective magisterial districts. It is then stated as follows:

"The property mentioned in items (c), (d), (e) and (f) shall constitute all the property on which any such corporation shall be liable to pay taxes."

(Note that it does not say that all such property shall be taxed.)

It then provides,

"If a company have branches, each branch shall be assessed separately in the county and magisterial district where its principal office for transacting its financial concerns are located"—if no such office then in the district where its operations are carried on.

As far as the parts with which we are now dealing are concerned, these sections had not been revised for over twenty-five years. In 1933 the legislature, while allowing section 13 to remain as stated, amended article 12 so as to begin "each incorporated company, foreign or domestic, having its principal office or chief place of business in this state, or owning property subject to taxation in this state." It further struck out the provision as to reporting deductible debts. Items (c), (d), (e), (f), together with the requirements for reporting them, remain unchanged.

[fol. 80] The new act likewise provides in 11-3-15 for the assessment of capital used in trade or business by natural persons. This section provides that the value of that capital shall be ascertained by requiring the owner, agent or chief accountant to report the following:

(c) The amount of all money derived from or belonging to such trade or business, on hand or remaining uninvested on that day, whether in or out of the state, payable to such i-dividual or firm;

(d) The amount in value of all credits arising out of any such business and remaining unpaid on that date, whether due or not, and whether in or out of the state;

(e) The amount and true and actual value of all money, notes, bonds, bills, accounts receivable, stocks and other intangible property made by such person or firm whether in or out of the state, other than those hereinbefore specified."

As the word "such" is used in two of these sections and as the word "such" evidently refers to "such trade or business carried on in any county of the state" petitioner claims there is discrimination.

In addition to these statutes, petitioner relies further on 11-5-1—the section defining what personal property is taxable. It is contended that that section limits the taxation of personal property to that belonging to residents, that in the state owned by -on-residents and that belonging to citizens and loaned outside the state.

There remains only to add that 11-5-6 providing for deduction of indebtedness has been repealed.

It has been mentioned that petitioner returned a certain amount of bank deposits computed according to a formula already expressed and the amount of accounts receivable due from residents of West Virginia. Petitioner does not admit that it is subject to taxation on these amounts, but submits them as the only possible subjects of taxation. [fol. 81] The attorney general takes the stand that all money and credits of the company are taxable in West Virginia. The prosecuting attorney states that he knows of no authority to tax bank deposits outside the state, or to tax debts due from non-residents to a non-resident; his contention is that petitioner is taxable on all its bank deposits in the state, and on all debts due from residents thereof.

It will be simpler to discuss first the general application of the statutes, and then their particular application. In the first place, the court holds—apparently without dispute by counsel—that we are now concerned with no change in the statute other than the provision eliminating the deduction of debts. The insertion of the words "foreign or domestic" makes no change. The statute has been con-

sistently regarded as applying to both foreign and domestic corporations and it is quite obvious that, as it has always included all corporations owning property subject to taxation in West Virginia, the point does not seem to require further discussion. The important feature lies in the determination of what it attempts to tax. For this reason, in the mention of the statutes above, the words "all the property of such corporation liable to taxation" were underlined when used in reference to the assessor's duties. Those words seem to indicate that the legislative intent was to tax everything it could tax, but not to attempt to tax what it could not. This may serve the statute from the ridiculous implication apparent in Section 12, that if a corporation owns any property subject to taxation in West Virginia, it thereupon becomes liable to pay a tax to that state on all its intangibles wherever situate and however derived. The attorney general does not contend that this latter is the law—he contends it is the law in regard to Wheeling Steel Corporation, but bases his argument on the conditions attending petitioner.

The attitude of the Supreme Court of the United States on double taxation of personal property is here of extreme importance. As indicated in the opinion in the matter of [fol. 82] the Fidelity Investment Association, this court is convinced by the cases of Farmers Loan & Trust Co. v. Minnesota, 280 U. S. 205, 75 L. Ed. 190, 50 S. C. R. [illegible], 65 A. L. R. 1000, and Baldwin v. Missouri, 281 U. S. 586, 74 L. Ed. 1056, 50 S. C. R. 436, 72 A. L. R. 1303, that the doctrine of that court now is that personal property, tangible or intangible, has a situs and may be taxed only in the state of that situs. That this proposition is arguable needs reference only to the fact that Justices Holmes, Stone and Brandeis have uniformly expressed dissent, although Justice Stone concurred in the former decision—not in the principles laid down. The second and third paragraphs of Justice McReynolds' opinion on page 1004 of 65 A. L. R. settled this. The result of this holding is that a state may not tax intangibles unless their situs is within that state. In other words, this does away with the old idea that the maxim mobilie sequuntur personem can be altered by statute. A state cannot by statute fix the situs of personal property—that personal property has an actual situs, either under the maxim stated or, as a matter of business, outside

that state. These cases arose by reason of inheritance taxes, but Justice McReynolds specifically refers to ad valorem taxation on page 1306, third paragraph, 72 A. L. R. Ad valorem taxation is a term sufficiently broad to apply to all our present points of discussion.

On theory this doctrine is arguable, as mentioned. As a matter of practice it is almost a necessity. The doctrine of business situs, modifying mobile sequuntur personam, grew up because it seemed manifestly unfair that states having definite charge of a business and protecting it should derive no benefit therefrom or should be denied the revenue from property actually situate therein, although owned by a non-resident. Unfortunately, the doctrine of business situs is subject to abuse, and, as its rules are rather arbitrary, it could work far more hardship than the original maxim. If each state were entitled to declare by statute what is a business situs, and no court could review those [fol. 83] decisions, it is obvious that petitioner in this case might be taxed in so many states as to deny it the right to operate.

We, therefore, modify the first paragraph of the syllabus in Baldwin v. Missouri and hold that the imposition of a tax by a state in respect to deposits in banks within the state to the credit of a non-resident and debts owed by citizens of the state (or otherwhere) to a non-resident when such deposits or debts have not been given a business situs in such state, violates the due process clause of the 14th Amendment.

In this respect, this court is bound by the decision of the Federal Supreme Court just as much as it is by a decision of the Supreme Court of Appeals of West Virginia.

We must not overlook the fact that double taxation is not hereby averted. Every taxation of credit is double taxation. The one hundred dollars in the hands of A is taxable. When he lends it to B it is taxable in the hands of B and the obligation will be taxable in the hands of A. This interchange can be carried on indefinitely so that the same property may be taxed without restriction on the number of times. In addition to that, a taxation of credit without debts deductible is a penalty on the extension of credit. The cash and carry business is exempt from this tax. The man who owes and is owed nothing is exempt from this tax. The man who owes and is owed five million dollars

is taxed on five million dollars, although he does not owe more than the man who owes and is owed nothing. It is, therefore, not strange that our Supreme Court is endeavoring to shield the owners of intangibles from taxation thereon in more than one state.

From this it will be seen that the matter of discrimination, mentioned above as contended by petitioner, has no practical application. If the state has attempted to tax either an individual or a corporation on property having a situs outside the state, that attempt is void.

It may here be mentioned that attention is called to the fact that Ohio taxes some of these credits of this petitioner [fol. 84] in the amount of $250,133.42. This fact is not helpful. Ohio may or may not have a right to tax them, and it is on this rather than on actual taxation that any importance must rest. This is clearly shown by the remarks of Justice McReynolds on page 1003, 65 A. L. R., in regard to Coe v. Errol, 116 U. S. 517, 524, 29 L. Ed. 715, 6 S. W. 475. The Coe case was long the authority in support of double taxation. Justice McReynolds points out that the fact that logs were taxed in Maine would not prevent their being taxed by New Hampshire. This was not because both states could tax them, but because the imposition of an erroneous tax in Maine did not oust New Hampshire of tax jurisdiction.

Accordingly, we are left with our old West Virginia statute, with no express language to guide us and not even a decision of our Supreme Court to shed light. The only West Virginia authorities cited are the dicta in Watson v. Fairmont, 38 W. Va. 183, 13 S. E. 467, and Wheeling v. Hawley, 18 W. Va. 476. These decisions merely hold that money, credits, and securities follow the person and that that is the settled law of West Virginia. In other words, West Virginia has never officially recognized business situs as a part of its law. However, while there is a Michigan case to the contrary, the mere fact that a state has never recognized this doctrine is not ground for rejecting a doctrine so universally recognized. Re Dodge Bros., 241 Mich. 665, 217 N. W. 777.

A more serious matter arises in regard to the construction of the statute itself. As indicated, the legislature has said, in effect, "We are going to tax everything that an individual or a corporation owns and which we may lawfully

tax, and therefore the assessor shall take the reports required and determine what is liable to taxation. If an assessor cannot determine this, the courts may do so". Let us add to this the fact that the reports as required by statute will in no manner enable the assessor so to decide. The petitioner has made its report more elaborate than necessary, so the question does not here arise on the facts; [fol. 85] but it will readily be seen that a court must be charitable in order to give to this statute the effect for which the state contends.

However, the situation is not without precedent. In Coal Co. v. Fox, an Indiana case reported in 176 N. E. 11 and 79 A. L. R. 333, we find on pages 338 and 339 of the last-mentioned report a statute which is, for all practical purposes, on all fours with this in the matter of credits. The court did not allow the tax involved in that case, but it did not disallow it by reason of the statute. The validity of a statute is to be presumed. The court has entertained considerable doubt as to the question of the validity of this particular statute—merely because it has very little patience with a legislative enactment which leaves the actual taxing part of the statute to be written in by assessors and courts. It is exactly the same as if the legislative should say "We tax all the property mentioned in the constitution. The assessor will carry out this provision."

As charity seems to be generally extended to these attitudes, the statute is held valid, although with considerable misgiving. The admirable statute of Louisiana, found in New Orleans v. Stemple, 44 L. Ed. 474, and in some of the other Supreme Court decisions cited by counsel and involving the Louisiana statute, shows how simple it is for a legislature to say what it means. In this case, the court is obliged to fill in a blank.

We, therefore, hold that the statute does tax all property situated in the state of West Virginia. What tangibles are within the state of West Virginia? Many attempts have been made to answer this question, but they are generally limited to specific cases. The attorney general makes the broad claim that Crane Co. v. Des Moines, 208 Iowa 164, 225 N. W. 344, 76 A. L. R. 801, holds that all accounts payable in a certain place are taxable. Petitioner's counsel represents that this case holds that the accounts in question were not taxable. Both statements are correct unless we apply the technical meaning to the word

[fol. 86] hold. The case held the particular accounts involved are not taxable; but it did say by way of dictum that accounts due the Crane Co. for goods sold through its Des Moines office, also some accounts represented goods sold directly from the Chicago office and charged against the Des Moines agency, for which the Des Moines agency was expected to collect, were taxable in Iowa. It then proceeded to hold that the statute involved did not tax them. If the facts given in this case are all the facts, it must be held that the holding cited by the attorney general is both dictum and bad law. We are told that the Des Moines agency was to collect all of these accounts and remit the same promptly to the home office at Chicago, and remittances were made every week covering collections so made. It does not even say that these accounts were owed by Iowa debtors. Surely it is unnecessary to point out that if an individual sends an account or accounts for collection from his home state to another state, those accounts do not thereby become taxable, even though the collector may be engaged in business in the second state on behalf of the owner of the accounts. The simple case is that where a corporation or individual (for the same rules apply to both) resides, say in New York and has different stores throughout the country. At each store sales are made and credits extended. Each store is, for all practical purposes, a business unto itself. The accounts of that store are undoubtedly taxable in the state of its situs, as long as that store carries on business in that way. This is well illustrated in Armor Packing Company v. City Council, 45 S. E. 424 (Ga.). The syllabus is so apt ~~it may be~~ quoted:

"Notes, accounts, and other choses in action in the hands of an agent of a non-resident corporation of this state, and which were received in the course of the business so conducted, are taxable by such municipal corporation."

It will be noted that this makes no distinction as to the domicile of the debtors. But when we turn to bank deposits, we find that the bank deposits of that business are [fol. 87] similarly taxable unless it is the custom of the agent to forward them with reasonable promptness to the head office. Commonwealth v. R. G. Dun & Co. (Ky.), 102 S. W. 859. Commonwealth v. Prudential, 149 Ky. 380, 149 S. W. 836.

This distinction shows clearly a point of which we must never lose sight. The maxim that personalty follows the person is still the law as regards intangibles. In this case all of petitioner's intangibles are taxable in Delaware unless they have acquired a business situs elsewhere, as we have seen. It is not a case of escaping taxation. Petitioner may be taxed in full in Delaware unless some of its intangibles have acquired an actual business situs otherwhere. There is loose language in some of the cases to the effect that an individual taxed carries the burden of proving that his property is not taxable. This can mean only that the burden is on him to show that he is a non-resident and that the property is intangible. Once these are shown, the presumption is that the property is taxable at his domicile. Consequently, when a company is engaged in far-flung operations, it not infrequently happens that each transaction is so linked up with several states that the credit arising therefrom acquires a business situs nowhere, and its only situs is the original domiciliary situs. In reasoning along this line, we must further always remember that a credit does not always depend on the circumstances giving rise to it, although in business these circumstances usually threw a great deal of light. It need hardly be mentioned that the situs of a credit may be changed from time to time after the credit has come into being.

The word "far-flung" is taken from the case of American Barge Line v. Board, 55 S. W. (2d) 416. In that case, a Delaware corporation had barges on the Mississippi and Ohio rivers from Pittsburgh to New Orleans, had scattered offices, but cleared or accounted for all its business through the Louisville office and all its bills were payable there. Business was done in many states and it was held that the [fol. 88] business situs rule is inapplicable to accounts receivable arising from far-flung business. That is unquestionably the law. If credits are interstate rather than intrastate (this refers to interstate situs and not to interstate commerce) their situs is at the domicile of the owner. It follows that petitioner is taxable only on accounts arising from its business in West Virginia, but it is taxable on all those accounts. The business in West Virginia includes transactions where the sales are made in West Virginia, the shipments are made from West Virginia and the accounts are payable in West Virginia. These accounts would

seem to have a fixed and definite situs in West Virginia, without regard to the domicile of the debtors. This is well brought out in Hardware Co. vs. Multnomah County, 115 Pac. 150 (Ore.). In that case, a Minnesota corporation operated a branch in Portland. The Portland branch received payment for sales made in Oregon and other states and collected all the accounts incurred with it, retaining a small sum and remitting the excess to the main office. The cash and accounts in the possession of the branch office were held taxable in Oregon, without regard to the residence of the debtors, but no tax was assessed on moneys remitted from this business to the main office. Facts are set forth in this case to indicate that taxation was further allowed on bills payable at the Oregon office, arising by reason of goods shipped from Duluth. If the court intended to carry the doctrine that far, this court must dissent.

There is no reason why this should not apply to bank deposits as well, except that the courts consistently refuse to apply it. Consequently, the holding is that petitioner must pay taxes on all of those local bank deposits arising out of the Wheeling business, the same rule as to what is Wheeling business to be applied in this as is indicated above for credits.

It follows that the court cannot write figures into its opinion. Those figures are not forthcoming and, tech-
[fol. 89] nically, the state has not asked that they be forthcoming. Once again the court must write language into the statute and order the petitioner to make such reports.

It is realized that, in a matter of so much confusion, it may be that the court has not expressed itself clearly. For this reason, the holding may be summed up as in the following paragraph:

Credits arising from sales made in West Virginia of goods shipped from West Virginia plants with accounts therefor payable in Wheeling are properly taxable. As to the bank deposits, only so much thereof may be taxed as is in West Virginia banks by reason of moneys received by reason of sales made as indicated—in West Virginia, with shipments from West Virginia and payable in Wheeling.

It is realized that it may be very difficult to provide the figures on the bank deposits. The court has no quarrel with the method adopted by petitioner, as far as fairness is concerned, but cannot adopt it as a matter of law. How-

ever, if the petitioner is unable to furnish this information, it will then be time enough to consider this point.

On the matter of credits, as indicated on page four of this opinion, the court is considering it true that, with the exception of $72,310, the accounts receivable are due from debtors of petitioner resident in states other than West Virginia and representing sales by petitioner to such debtors of goods shipped from outside points. While the court accepts this as true for its opinion, counsel are, of course, permitted to correct it if untrue. Applying what is said above to this statement, presumably credits are taxable only in the amount of $26,296.96, although the statement is incomplete in that respect—it states that the goods on which the other credits from West Virginia debtors were based were manufactured outside the state of West Virginia, but does not say that they were shipped from outside points. Apparently, from the general nature of petitioner's business, this latter is a necessary implication.

It has been suggested that an order on this petition is [fol. 90] necessary before January 1. If so, it must be entered immediately upon receipt of this opinion—on Friday, December 29. This necessity for prompt action arises from the fact that these cases were submitted by counsel so late that it has been impossible to give them proper consideration and have these opinions ready before the late afternoon of Thursday, December 28.

As the principles enunciated in this opinion seem to cover the petitions of Bloch Brothers Tobacco Company and Mail Pouch Tobacco Company, no separate opinions thereon are handed down. However, the facts in those cases are not identical and if a dispute arises, counsel may confer with the court before entry of orders therein.

Addendum

The above opinion omits to dispose of credits due from employees on the stock subscriptions. This is not in any sense a localized business and none of it should be taxed in West Virginia. It is purely a matter for the domicile of the corporation.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 91] IN SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 7970

In re WHEELING STEEL CORPORATION ASSESSMENT

Ohio County

OPINION

Reversed and Remanded

1. The rule of mobilia secuunter personam "merely means that the situs of personal property for purposes of taxation is the domicile of the owner unless there is a statute to the contrary, or * * * in case of intangible property, it has acquired a business situs in a state other than the one where the owner is domiciled." Cooley, Taxation (4th Ed.), section 440.

2. Under Code 1931, 11-3-12 and 13, as amended by the legislature, Acts First Extraordinary Session 1933, chapter 38, the intangible property of a foreign corporation with its chief place of business in this state, not shown to be primarily liable for taxation in some other jurisdiction, may be assessed for taxation in this state.

[fol. 92] HATCHER, Judge:

This proceeding involves the taxation of the intangible property of Wheeling Steel Corporation (hereinafter called the corporation), a foreign corporation which has its chief place of business in this State. The assessor of Ohio County made a total assessment against the corporation for intangibles of $4,963,950. That assessment was reduced by the Tax Commissioner to $4,491,323.67. The circuit court further reduced it to $496,095.35. The State and the county taxation units secured an appeal here.

The facts are agreed. The corporation was chartered in Delaware and is now qualified to do business in Ohio and Minnesota as well as West Virginia. The principal offices of the corporation are stated in its charter to be located in the city of Wilmington, Delaware, but the corporation performs no actual business in Wilmington, and maintains there only such nominal office as the laws of Delaware require. The corporation's general business offices are

located in Wheeling where it owns a twelve story office building. Approximately 43% of the building is occupied by the corporation for its office work. Its managing officers reside at Wheeling. It maintains sales offices in fourteen of the larger cities throughout the United States. On January 1, 1933, it owned coal properties in West Virginia and Ohio, and, through stock ownership, controlled coal properties in Pennsylvania and Kentucky. It owned iron ore properties in Minnesota. It owned four manufacturing plants in West Virginia and four in Ohio. It owned four steamboats, two motor ships, and ninety-three barges used in transporting coal and steel on the Allegheny, Ohio and Mississippi rivers. The agreed statement of facts shows the transaction of the following business at [fol. 93] Wheeling.

"The petitioner's (the corporation's) general books and accounting records are kept at the Wheeling office. * * *

Sales contracts are negotiated and orders are taken by the various sales offices subject to acceptance or rejection at Wheeling.

The Portsmouth, Ohio, plant makes up and mails out invoices for all products shipped from that plant, together with bills of lading and shipping notices. All other plants prepare complete invoices with exception of information with reference to the price of material described therein. The latter invoices are then forwarded to Wheeling where they are completed and mailed to the customer. Bills of lading and shipping notices are, however, mailed to customers from the individual plants. All invoices are payable in Wheeling.

The majority of commercial accounts are paid by check issued in Wheeling. Payrolls are made up and payroll checks are prepared and signed at the various plants and are distributed to the employees by the respective plants. Such checks are paid with funds on deposit in banks in localities where the plants are situated. * * *

The capital stock is transferable in both New York City and Wheeling, but is registerable only at the office of the Registrar in New York City. Capital stock records are maintained in New York City and at the Wheeling Steel Corporation's Delaware office.

Dividends, when declared, are ordered to be paid and distributed at meetings held at Wheeling, although the

checks are drawn and distributed by the Dividend Disbursing Agent located in New York City, and are paid with funds on deposit in banks in New York City."

The total assessed value of the real estate and tangible personal property owned by the corporation on January 1, 1933, was $31,977,600. The assessed value of its real estate and tangible personal property in West Virginia on January 1, 1933, was $8,673,205, or 27.10% of the total. The total shipments from plants located outside of West Virginia in 1932 amounted to $13,787,742.25. The total shipments from West Virginia plants in 1932 amounted to $4,402,872.01, or 24.20% of the total shipments. The corporation had bank deposits in five states on January 1, 1933, amounting to $2,307,773.61, of which there was [fol. 94] $849,161.91 cash in West Virginia banks. Of the West Virginia bank deposits $121,684.91 was derived from the sale of goods manufactured in this state. The total amount of accounts and notes receivable on January 1, 1933, was estimated at the probable worth of $2,234,743.11. Of that sum $374,410.42 was due on account of goods manufactured in this state. The corporation pays to the state of Delaware only such taxes as are requisite to protect its corporate franchise. It was assessed in Ohio in 1933, under the statutes of that state, $250,133.42 on its intangible property. That assessment was not included in the deductions allowed by the Tax Commissioner.

The assessment fixed by the circuit court consisted of the above items of $374,410.42 for credits, and $121,684.91 for bank deposits.

The corporation charges cross-error. Its primary contention is that under the rule of mobilia secuunter personam its intangible property cannot be taxed anywhere except in the state of Delaware. That rule is merely a convenient "fiction" and cannot be allowed "to obscure the truth." Metropolitan Life Ins. Co. v. New Orleans, 205 U. S. 395. The modern conception of the rule is well expressed by a leading authority on taxation as follows: "So far as applied to taxation it merely means that the situs of personal property for purposes of taxation is the domicile of the owner unless there is a statute to the contrary, or * * * in case of intangible property, it has acquired a business situs in a state other than the one where the owner

is domiciled." Cooley, Taxation (4th Ed.), sec. 440. Accord: Safe Deposit & T. Co. v. Virginia, 280 U. S. 83, and the wealth of authority cited in Annotation 76 A. L. R. 806. The attorney general contends that this assessment is within both the exceptions mentioned by Cooley.

[fol. 95] Code 1931, 11-3-12 and 13, as amended by the legislature, Acts First Extraordinary Session 1933, chapter 38, provides as follows: "Each incorporated company foreign or domestic having its * * * chief place of business in this state * * * shall annually * * * make a written report to the assessor, showing the following items: * * * (c) the amount of money on hand or on deposit anywhere subject to its check or draft on the first assessment day of the year; (d) the amount of credits and investments other than its own capital stock held by it on said date with their true and actual value." Upon receiving such report the assessor "shall assess the value of all property of such corporation liable to taxation and enter the same as follows, viz: * * * all property in items (c) and (d) shall, together with their valuation, be entered in the personal property book of the county, and in the magisterial district wherein is the * * * chief place of business of such corporation." The statutes reflect clearly the legislative will to tax all intangible property of the corporation (items c and d) "liable to taxation."

It is well recognized in modern cases that intangible property may acquire a "business situs" for purposes of taxation in a state other than the state of the owner's domicile. Cooley, supra, section 465; New Orleans v. Stempel, 175 U. S. 309; Bristol v. Washington Co., 177 U. S. 133; Annotation 79 A. L. R. 344. The facts agreed herein show that the management of the corporation radiates from Wheeling and that the major part of its executive business is performed or initiated there. We are of opinion that such a localization of the corporation's business at Wheeling imparts to its entire intangible property a prima facie situs for taxation at that place. There is no inhibition in the Federal Constitution against the taxation of such property by the state. Board of Assessors v. Comptoir National, 191 U. S. 388. Wherefore, the learned trial court should not [fol. 96] have limited the assessment to credits and cash arising merely from sales of the corporation's West Vir-

ginia products. On the other hand, the Federal Court cautions against an assessment "intrinsically arbitrary" of a unitary corporation enterprise which is conducted in several states, and warns that an apportionment of its intangible property among such states for purposes of taxation may be requisite. See Hans Rees' Sons, Inc. v. North Carolina, 283 U. S. 123. The statutory limitation of the assessment to property "liable to taxation" indicates that the legislature had this contingency in mind and did not propose to tax intangibles which were primarily subject to taxation in another jurisdiction. The agreed statement of facts shows that Ohio has, by virtue of its statutes, claimed the right to tax intangible property of the corporation to the extent of $250,133.42. For the purposes of this opinion, we assume that the claim of our sister state is well founded, and should be deducted from the assessment as corrected by the Tax Commissioner. The agreed statement does not disclose a like claim by any other competent jurisdiction. But since this proceeding was tried under wrong conceptions of the law by the several parties hereto, it may be that all the pertinent facts were not developed. Therefore we are of opinion to remand this proceeding to the circuit court in order that it may be determined whether or not further deductions should be made in deference to the legal demands of other states.

The judgment of the circuit court is accordingly reversed, and the case remanded.

Reversed and remanded.

A true copy. Attest.

Wm. B. Mathews, Clerk.

[fol. 97] In Supreme Court of Appeals of West Virginia

7970

In re Wheeling Steel Corporation Assessment

State of West Virginia et al., Plaintiffs in Error

Mandate—Nov. 27, 1934

Upon a writ of error to a judgment of the circuit court of Ohio County, rendered on the 5th day of March, 1934.

The Court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments

of counsel thereon, is of opinion, for reasons stated in writing and filed with the record, that there is error in said judgment. It is therefore considered by the Court that the judgment of the circuit court of Ohio County, rendered in this case on the 5th day of March, 1934, be and the same hereby is set aside, reversed and annulled, and that the plaintiffs in error do recover from the defendant in error the Wheeling Steel Corporation their costs about the prosecution of their writ of error in this Court in this behalf expended. And this case is remanded to the circuit court of Ohio County for further proceedings to be had therein according to the principles stated and directions given in the written opinion aforesaid, and further according to law: all of which is ordered to be certified to the circuit court of Ohio County.

The decision of points in the foregoing case, as the same appears from the syllabus and written opinion prepared by Judge Hatcher, was concurred in by Judges Woods, Litz, Maxwell and Kenna.

A true copy. Attest.

Wm. B. Mathews, Clerk Supreme Court of Appeals.

A copy teste. L. L. Nightengale, Clerk.

[fols. 98 & 99] Bill of costs omitted in printing.

[fol. 100] In Circuit Court of Ohio County

Tax Appeal

Wheeling Steel Corporation, a Corporation, Plaintiff,

vs.

Fred L. Fox, State Tax Commissioner of West Virginia, and Karl G. Sailer, Assessor of Ohio County, West Virginia, Defendants

In the Matter of the Appeal of Wheeling Steel Corporation, a Corporation, from the Assessment of Certain of Its Intangible Property for the Year 1933

Judgment—July 8, 1935

This matter came on this 8th day of July, 1935, again to be heard upon the petition of Wheeling Steel Corporation

and exhibits filed therewith and made a part thereof; upon the agreed statement of facts filed herein and made a part of the record in this cause; upon additional facts made a part of the record herein by agreement of the parties and included in an order entered by this court herein upon the 5th day of March, 1934; upon the opinion of the Supreme Court of Appeals of West Virginia handed down in this cause upon the 27th day of November, 1934, (In re. Wheeling Steel Corporation Assessment) and upon the mandate of said court, dated the 10th day of April, 1935, hereby made a part of the record in this cause, upon the additional stipulation dated July 8, 1935, filed herein and made a part hereof, and upon all other proceedings herein and upon argument of counsel for the parties.

Upon consideration of all of which, and particularly the additional stipulation of facts filed herein, and in conformity with the opinion and mandate of the Supreme Court of Appeals of West Virginia, it is adjudged, ordered and decreed that the assessment made by the County Assessor, as corrected by the State Tax Commissioner, of Wheeling [fol. 101] Steel Corporation's cash in banks and on hand on January 1, 1933, in the amount of Two Million Three Hundred Seven Thousand Seven Hundred Seventy-three Dollars and Sixty-one Cents ($2,307,773.61), and of accounts and notes receivable owned by Wheeling Steel Corporation on January 1, 1933, in the amount of Two Million Forty-six Thousand Four Hundred Four Dollars and Twenty-four Cents ($2,046,404.24), be and it is hereby further amended in accordance with said opinion of the Supreme Court of Appeals of West Virginia by deducting from the total thereof the sum of Two Hundred Fifty Thousand One Hundred Thirty-three Dollars and Forty-two Cents ($250,133.42), being the amount of moneys, accounts and notes receivable of Wheeling Steel Corporation assessed to it in the State of Ohio, leaving a remainder of Four Million, One Hundred Four Thousand, Forty-four Dollars and Forty-three Cents ($4,104,044.43), upon which said Wheeling Steel Corporation shall be assessed for property taxation upon its moneys, bonds, credits and investments in the said amount of Four Million One Hundred Four Thousand, Forty-four Dollars and Forty-three Cents ($4,104,044.43) for the calendar year 1933.

It is, therefore, further ordered, adjudged and decreed that the said Wheeling Steel Corporation shall be assessed for the year 1933 on account of moneys, bonds, credits and investments in the said amount of Four Million One Hundred Four Thousand Forty-four Dollars and Forty-three Cents ($4,104,044.43).

It is further adjudged, ordered and decreed that, in conformity with the additional stipulation herewith filed, this case shall hereafter be styled Wheeling Steel Corporation, a corporation, vs Fred L. Fox, State Tax Commissioner of West Virginia, and Karl G. Sailer, Assessor of Ohio County, West Virginia.

It is further adjudged, ordered and decreed that the said Wheeling Steel Corporation is not entitled to any further deductions on any account except the amount of intangibles assessed by the State of Ohio as aforesaid.

[fol. 102] It is further adjudged, ordered and decreed that a copy of this order be certified by the Clerk of this Court within twenty days from the entry thereof to the Auditor and State Tax Commissioner of West Virginia and the Sheriff and Assessor of Ohio County.

And the said Wheeling Steel Corporation objects and excepts to the entry of this decree assessing it upon an amount of its accounts receivable and bank deposits for the said year 1933. Upon motion of counsel for Wheeling Steel Corporation the execution of this decree is suspended for ninety (90) days from the date hereof for the purpose of giving said Wheeling Steel Corporation time within which to apply for an appeal or writ of error to the Supreme Court of Appeals of West Virginia, provided said Wheeling Steel Corporation shall forthwith give a stay bond, conditioned according to law, in the sum of Six Hundred Dollars ($600.00) for the purpose of establishing this stay.

Approved for entry.

Donald McKee, Prosecuting Attorney of Ohio County. Homer A. Holt, Attorney General of West Virginia, for Fred L. Fox, State Tax Commissioner of West Virginia, and Karl G. Sailer, Assessor of Ohio County, West Virginia.

Have seen: Wright Hugus, J. E. Bruce, for Wheeling Steel Corporation.

A copy. Teste. L. L. Nightengale, Clerk. (Seal Circuit Court, Ohio County, West Virginia.)

[fol. 103] IN CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

In the Matter of the Appeal of WHEELING STEEL CORPORATION, a Corporation, from the Assessment of Certain of Its Intangible Property for the Year 1933

ADDITIONAL STIPULATION—Filed July 8, 1935

Pursuant to the opinion of the Supreme Court of Appeals of West Virginia handed down herein on the 27th day of November, 1934, and for the purpose of supplying additional evidence required by said opinion, it is hereby stipulated and agreed by and between Wheeling Steel Corporation, Fred L. Fox, State Tax Commissioner, Karl G. Sailer, Assessor of Ohio County, and the State of West Virginia for itself and the taxing units of Ohio County, West Virginia, that the original statement of facts filed herein may be and is amended to include the following agreed facts and that the same may be taken and considered by the Circuit Court of Ohio County in this proceeding in the determination of the matters herein involved, the same as if said facts were testified to by witnesses:

1. That the taxpayer was assessed by the State of Ohio on account of intangibles in the amount only of Two Hundred Fifty Thousand One Hundred Thirty-three Dollars and Forty-two Cents ($250,133.42).

2. That when the review by the Tax Commissioner of the assessment of taxpayer's intangibles, as made by the Assessor of Ohio County, was made, neither the Assessor nor the State Tax Commissioner was advised that Two Hundred Fifty Thousand One Hundred Thirty-three Dollars and Forty-two Cents ($250,133.42) of such intangibles had been assessed and the tax thereon paid in the State of Ohio.

[fol. 104] 3. That no states other than Ohio and West Virginia have assessed taxpayer upon any of its intangibles for the year 1933.

4. That the money on deposit in banks outside the State of West Virginia on the first day of January, 1933, had been deposited in such banks by taxpayer by sending from taxpayer's Wheeling, West Virginia, office to such banks the

original checks or drafts received by taxpayer from its customers in payment for the purchase of materials, manufactured and sold by taxpayer, such checks having not first been deposited in West Virginia banks.

5. That taxpayer's deposits of money in banks outside and inside the State of West Virginia are not segregated by any policy or practice to keep separate the receipts from sales of products manufactured in and shipped from taxpayer's West Virginia plants and sales of products manufactured in and shipped from taxpayer's plants located outside the State of West Virginia. Ordinarily not more than 20% of the total moneys of taxpayer on deposit at any time in banks within and without the State of West Virginia has been derived from sales of taxpayer's products manufactured in and shipped from its West Virginia plants. This statement is made as of January 1, 1933.

6. In the year 1933, taxpayer spent in West Virginia for permanent plants and improvements and property additions the sum of Two Hundred Four Thousand Thirty-four Dollars and Fourteen Cents ($204,034.14), in the State of Ohio the sum of Nine Hundred Eighty-seven Thousand Three Hundred Sixty-three Dollars and Nine Cents ($987,363.09) and in other states the sum of One Thousand Five Hundred Ninety-four Dollars and Eighty-one Cents ($1,594.81).

7. That at least eighty per cent (80%) of the sum spent by taxpayer during the years 1932 and 1933 in the conduct of its business, including the purchase of materials, maintenance and repairs of plants, building of improvements and property additions, payrolls and other operating ex-
[fols. 105 & 106] penses were made in connection with the operations of its plants and business outside the State of West Virginia, and that all of such payments, excepting some sums of money borrowed by taxpayer from banks in New York City were made from the sale of its products, eighty per cent (80%) of which had been manufactured in the State of Ohio.

8. Of the moneys expended for payrolls, materials, new equipment, maintenance, operating expenses, and the conduct of the business in Ohio and states other than West Virginia, the moneys are expended by executive action

taken at Wheeling and by the drawing of checks or drafts at Wheeling, except in connection with the payment of payrolls at its Portsmouth, Ohio, and Steubenville, Ohio, plants where payroll checks or orders are drawn, but drawn against moneys sent to banks at such points for the express purpose of meeting the payrolls and for incidental items as they arise. All moneys are controlled and the expenditures directed by the Wheeling office, and if the immediate expenditure be made elsewhere, such immediate expenditure is made only under specific or general direction and control of the Wheeling office.

9. That hereafter this case may be styled: Wheeling Steel Corporation, a corporation, vs. Fred L. Fox, State Tax Commissioner of West Virginia, and Karl G. Sailer, Assessor of Ohio County, West Virginia, (In the matter of the Appeal of Wheeling Steel Corporation, a corporation, from the Assessment of certain of its Intangible Property for the year 1933).

July 8, 1935.

State of West Virginia, by Homer A. Holt, Attorney General. Donald McKee, Prosecuting Attorney of Ohio County. Fred L. Fox, State Tax Commissioner. Karl G. Sailer, Assessor of Ohio County. Wheeling Steel Corporation, by J. E. Bruce, Secretary.

[File endorsement omitted]

[fol. 107] [File endorsement omitted]

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

[Title omitted]

PETITION FOR WRIT OF ERROR—Filed July 22, 1935

To their Honors, Judges of the Supreme Court of Appeals of West Virginia:

The Petitioner, Wheeling Steel Corporation, a corporation, respectfully represents that it is aggrieved by a final Judgment Order entered by the Circuit Court of Ohio

[fol. 108] County, West Virginia, on the 8th day of July, 1935.

Your petitioner respectfully shows:

That your petitioner is a Delaware corporation doing business in West Virginia and other states as a foreign corporation, having its general business offices in Wheeling, West Virginia.

That in its tax return for the year 1933 your petitioner reported for taxation cash in banks amounting to $312,729 and accounts and notes receivable totalling $72,310.

That on January 1, 1933, your petitioner owned cash on hand and in banks in the sum of $2,307,773.61, of which $849,161.99 was on deposit in West Virginia banks, the remainder being on deposit in banks in other states; that the sum of $53,072.63, included within said $849,161.99 on deposit in West Virginia, had been derived by your petitioner from sales of material manufactured in and shipped from your petitioner's plants located in West Virginia to customers resident in West Virginia; that the sum of $68,612.28, likewise included within said $849,161.99 on deposit in West Virginia, had been derived from sales of material manufactured in and shipped from your petitioner's plants located in West Virginia to customers resident in states other than West Virginia; that the sum of $727,477.08, likewise included within said $849,161.99 on deposit in West Virginia, had been derived from sales of material manufactured in and shipped from your petitioner's plants located outside of West Virginia to customers resident in states other than West Virginia; and that not more than twenty (20%) per centum of your petitioner's total money on deposit in banks located within and without the State of West Virginia was derived from sales of your petitioner's products manufactured in and shipped from its West Virginia plants.

That on January 1, 1933, accounts and notes receivable payable to your petitioner totalled $2,046,404.24; that receivables amounting to $374,410.42, included within said total, had been derived from sales of material manufactured in and shipped from your petitioner's plants located in [fol. 109] West Virginia; that receivables amounting to $302,100.42, included within said $374,410.42, had been derived from sales of material manufactured in and shipped from West Virginia plants to non-residents of West Vir-

ginia, and $72,310.00, likewise included within said $374,410.42, had been derived from sales of material manufactured in and shipped from West Virginia plants to residents of West Virginia; that the remainder of accounts and notes receivable, to-wit, the amount of $1,671,993.82, had been derived from sales of material manufactured by your petitioner outside of West Virginia and shipped from the places of manufacture direct to purchasers residing outside of West Virginia.

That the Assessor of Ohio County and the State Tax Commissioner of West Virginia assessed for taxation the total intangible personalty owned by your petitioner on January 1, 1933.

That your petitioner appealed from said assessment to the Circuit Court of Ohio County, and that the said Circuit Court entered a judgment order reducing the assessment to an amount equalling the accounts and notes receivable derived from sales of material manufactured by your petitioner in West Virginia and shipped from its West Virginia plants to customers wherever located, plus such portion of the money deposited in West Virginia banks allocable to West Virginia business upon the same basis.

That from this judgment of the Circuit Court of Ohio County the State Tax Commissioner and the Assessor of Ohio County appealed to the Supreme Court of Appeals of West Virginia, and that Your Honors, upon consideration of said appeal, rendered your opinion, now reported in 177 S. E. 535, reversed the judgment of the Circuit Court of Ohio County, and held that all the intangible property owned by your petitioner on January 1, 1933, had acquired a prima facie situs for taxation in West Virginia, but that, since the State of Ohio had taxed a portion of said intangible property, the amount thereof so taxed by the State of Ohio should be deducted from the total intangible property owned by your petitioner, that intangibles taxed by any other state should likewise be deducted, that the remainder thereof should be assessed for taxation in West Virginia, and remanded the proceeding to the Circuit Court of Ohio County in order that it might be determined what further deductions should be made.

That thereafter the Circuit Court of Ohio County found [fol. 110] that your petitioner is not entitled to any deductions other than the amount of intangibles taxed by the

State of Ohio as aforesaid, and in conformity with the opinion and mandate of Your Honors, ordered, adjudged and decreed that your petitioner be assessed for the year 1933 on account of moneys, bonds, credits and investments in the amount of $4,104,044.43, being the total value of the intangible property owned by your petitioner on January 1, 1933, less the amount taxed by the State of Ohio.

ASSIGNMENTS OF ERROR

From the adverse rulings assessing for taxation all of Wheeling Steel Corporation's intangible personal property owned by it on January 1, 1933, except that portion thereof assessed to Wheeling Steel Corporation in and by the State of Ohio, your petitioner respectfully seeks a writ or error. And as grounds therefor it respectfully submits that the Circuit Court of Ohio County erred in the following particulars:

1. The Circuit Court of Ohio County erred in refusing to hold invalid Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to your petitioner, a Delaware corporation doing business in West Virginia and other States, since they tax property of your petitioner outside the jurisdiction of the State of West Virginia and thus deprive your petitioner of property without due process of law, in contravention of Section 1 of the Fourteenth Amendment to the United States Constitution.

2. The Circuit Court of Ohio County erred in sustaining the validity of Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to your petitioner, a Delaware corporation doing business in [fol. 111] West Virginia and other States, and in construing said Sections to authorize the assessment for taxation in and by West Virginia of

(A) Any portion of your petitioner's intangible personal property;

(B) All of your petitioner's intangible personal property except that portion thereof which may have been taxed in and by States other than West Virginia;

(C) That portion of your petitioner's intangible personalty consisting of accounts and notes receivable derived

from shipments of products manufactured in and shipped from plants located in States other than West Virginia;

(D) That portion of your petitioner's intangible personal property consisting of accounts and notes receivable derived from shipments of products manufactured in and shipped from plants located in States other than West Virginia to customers located in States other than West Virginia;

(E) That portion of your petitioner's intangible personal property consisting of accounts and notes receivable derived from shipments of products manufactured in and shipped from plants located in West Virginia to customers located in States other than West Virginia;

(F) That portion of your petitioner's intangible personal property consisting of cash on deposit in banks located in States other than West Virginia;

(G) That portion of your petitioner's intangible personal property consisting of cash on deposit in banks located in States other than West Virginia derived from [fol. 112] business done in States other than West Virginia;

(H) That portion of your petitioner's intangible personal property consisting of cash on deposit in banks located in West Virginia derived from business done in States other than West Virginia.

3. The Circuit Court of Ohio County erred in refusing to hold invalid Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to your petitioner, a Delaware corporation doing business in West Virginia and other States, and in construing said Sections to authorize the assessment for taxation in and by West Virginia of all your petitioner's intangible personal property, except that portion thereof which may have been taxed in and by States other than West Virginia, since said Sections, when read in connection with Section 15 of said Article and Chapter, which limits the assessment for taxation of similar property owned by an individual or unincorporated firm to money derived from or belonging to and credits arising out of business done by such individual or unincorporated firm within the State of West Virginia, operate to deny your petitioner the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the United States Constitution.

Wherefore your petitioner prays in accordance with Chapter 11, Article 3, Section 25 of the Code of West Virginia, that a writ of error may be granted from said judgment and order of the Circuit Court of Ohio County, entered on the 8th day of July, 1935, and that upon a hearing of this cause said judgment and order may be reviewed and reversed and that this Honorable Court enter such decree and order as the Circuit Court of Ohio County should have entered in this cause.

[fols. 113 & 114] And your petitioner will ever pray, etc.

Wheeling Steel Corporation, by Wright Hugus, J. E. Bruce, Its Attorneys.

Certificate of Counsel

I, the undersigned, an attorney duly qualified to practice in the Supreme Court of Appeals of West Virginia, do hereby certify that in my opinion the judgment complained of ought to be reviewed.

J. E. Bruce.

[fols. 115 & 116] In Supreme Court of Appeals of West Virginia

Present: Hon. M. O. Litz, President; Hon. John H. Hatcher. Hon. Homer B. Woods. Hon. Haymond Maxwell. Hon. Jo. N. Kenna.

Wheeling Steel Corporation

vs.

Fred L. Fox, State Tax Commissioner, et al.

Order Refusing Writ of Error—September 3, 1935

This day came Wheeling Steel Corporation, by Wright Hugus, and J. E. Bruce, its attorneys, and presented to the Court a petition praying for a writ of error to a judgment of the Circuit Court of Ohio County, rendered on the 8th day of July, 1935, in a case in which said petitioner was plaintiff, and Fred L. Fox, State Tax Commissioner, and Karl G. Sailer, Assessor of Ohio County, were defendants, with a record of the judgment aforesaid accompanying the

petition, which being seen and inspected by the Court, the writ of error prayed for is refused.

A true copy. Attest.

Wm. B. Mathews, Clerk Supreme Court of Appeals of West Virginia.

[fol. 117] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1935

[Title omitted]

PETITION FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Your petitioner, Wheeling Steel Corporation, appellant below, herein styled "appellant", respectfully shows:

That your petitioner is a Delaware corporation doing business in West Virginia and other states as a foreign corporation, having its general business offices in Wheeling, West Virginia.

That this proceeding was begun in the Circuit Court of Ohio County, West Virginia, by the appellant herein, appealing pursuant to a statutory provision from an assessment for taxation made by the Assessor of Ohio County, West Virginia, and the State Tax Commissioner of West Virginia upon the total intangible personalty owned by the appellant on January 1, 1933. The said Circuit Court of Ohio County reduced the assessment to an amount equalling the accounts receivable derived from shipments of material manufactured by appellant in West Virginia and shipped from its West Virginia plants to customers located both within and without the State of West Virginia, plus that portion of the money deposited in West Virginia banks allocable to West Virginia business upon the same basis. From this judgment of the Circuit Court, the State Tax Commissioner and the Assessor of Ohio County appealed to the Supreme Court of Appeals of West Virginia. In its briefs and in oral argument before said [fol. 118] Supreme Court of Appeals this appellant urged that the statutes of West Virginia under which the purported assessment was made and taxes sought to be imposed were invalid not only for reasons of general law

but also because they deprived this appellant of property without due process of law and denied to this appellant the equal protection of the laws, and were consequently repugnant to the provisions of Section 1 of the 14th Amendment to the United States Constitution.

That the Supreme Court of Appeals of West Virginia, upon consideration of said appeal, rendered its opinion, now reported in 177 S. E. 535, reversed the judgment of the Circuit Court of Ohio County, upheld the validity of the statutes involved and held that the entire business of the appellant had been so localized in West Virginia that its entire intangible property had acquired a prima facie situs for taxation in that State, stating that "there is no inhibition in the Federal Constitution against the taxation of such property by the State", and remanded the case to the said Circuit Court of Ohio County for further proceedings.

That pursuant to the remand further proceedings were had in said Circuit Court of Ohio County, and on July 8, 1935 the said Circuit Court entered its judgment order in conformity with the opinion and mandate of the Supreme Court of Appeals of West Virginia, aforesaid.

That your petitioner, believing itself aggrieved by said judgment order, made timely application to the Supreme Court of Appeals of West Virginia (the highest court of said state) for a Writ of Error to said Circuit Court of Ohio County, again urging that the said statutes of West Virginia were invalid and repugnant to the provisions of Section 1 of the 14th Amendment to the United States Constitution for reasons hereinabove stated. The petition for Writ of Error was denied by the Supreme Court of Appeals of West Virginia on the 3rd day of September, 1935, without opinion.

That in said cause there is drawn in question the validity of statutes of the State of West Virginia on the ground that said statutes are repugnent to the Constitution of the United States and the decision is in favor of their validity, notwithstanding your petitioner's contention that said statutes violate Section 1 of the Fourteenth Amendment to the Constitution of the United States.

[fol. 119] That, therefore, in accordance with Section 237 (a) of the Judicial Code, and in accordance with the Rules of the Supreme Court of the United States, your peti-

tioner respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928, was passed, to wit, under Section 237 (a) of the Judicial Code, a review could be had in the Supreme Court of the United States on a writ of error, as a matter of right.

ASSIGNMENT OF ERRORS

The errors upon which your petitioner claims to be entitled to an appeal are as follows:

1. The Circuit Court of Ohio County (and the Supreme Court of Appeals of West Virginia, in declining to review the judgment of said Circuit Court) erred in refusing to hold invalid Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to this appellant, a Delaware corporation doing business in West Virginia and other States, since they tax property of this appellant outside the jurisdiction of the State of West Virginia and thus deprive this appellant of property without due process of law, in contravention of Section 1 of the Fourteenth Amendment to the United States Constitution.

2. The Circuit Court of Ohio County (and the Supreme Court of Appeals of West Virginia, in declining to review the judgment of said Circuit Court) erred in sustaining the validity of Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to this appellant, a Delaware corporation doing business in West Virginia and other States, and in construing said Sections to authorize the assessment for taxation in and by West Virginia of

(A) Any portion of this appellant's intangible personal property;

(B) All of this appellant's intangible personal property except that portion thereof which may have been taxed in and by States other than West Virginia;

(C) That portion of this appellant's intangible personalty consisting of accounts and notes receivable derived from shipments of products manufactured in and shipped from plants located in States other than West Virginia;

[fol. 120] (D) That portion of this appellant's intangible personal property consisting of accounts and notes receiv-

able derived from shipments of products manufactured in and shipped from plants located in States other than West Virginia to customers located in States other than West Virginia;

(E) That portion of this appellant's intangible personal property consisting of accounts and notes receivable derived from shipments of products manufactured in and shipped from plants located in West Virginia to customers located in States other than West Virginia;

(F) That portion of this appellant's intangible personal property consisting of cash on deposit in banks located in States other than West Virginia;

(G) That portion of this appellant's intangible personal property consisting of cash on deposit in banks located in States other than West Virginia derived from business done in States other than West Virginia;

(H) That portion of this appellant's intangible personal property consisting of cash on deposit in banks located in West Virginia derived from business done in States other than West Virginia.

3. The Circuit Court of Ohio County (and the Supreme Court of Appeals of West Virginia, in declining to review the judgment of said Circuit Court) erred in refusing to hold invalid Sections 12 and 13 of Article 3 of Chapter 11 of the Code of West Virginia, in their application to this appellant, a Delaware corporation doing business in West Virginia and other States, and in construing said Sections to authorize the assessment for taxation in and by West Virginia of all this appellant's intangible personal property, except that portion thereof which may have been taxed in and by States other than West Virginia, since said Sections, when read in connection with Section 15 of said Article and Chapter, which limits the assessment for taxation of similar property owned by an individual or unincorporated firm to money derived from or belonging to and credits arising out of business done by such indi-
[fol. 121] vidual or unincorporated firm within the State of West Virginia, operate to deny to this appellant the equal protection of the laws, in contravention of Section 1 of the Fourteenth Amendment to the United States Constitution.

4. The Supreme Court of Appeals of West Virginia erred in denying this appellant's Petition for a Writ of Error.

That your petitioner has filed herewith a statement as to the jurisdiction of the Supreme Court of the United States as provided by Rules 12 and 46 of the Rules of the Supreme Court of the United States.

Wherefore, your petitioner prays for the allowance of an appeal from the said Circuit Court of Ohio County, West Virginia, the highest court of said State in which a decision in this case could be had, to the Supreme Court of the United States, in order that the decision and final judgment herein may be examined and reversed, and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Circuit Court of Ohio County, West Virginia, under his hand and the seal of said Court, may be sent to the Supreme Court of the United States as provided by law, and that an order be made touching the security to be required of the petitioner, and that the bond tendered by the petitioner be approved.

Wright B. Hugus, J. E. Bruce, Attorneys for Petitioner.

November 2, 1935.

Appeal refused this 2nd of November, 1935.

M. O. Litz, President of the Supreme Court of Appeals of West Virginia.

[fol. 121½] [Endorsed:] Circuit Court, Ohio Co. Filed Nov. 25, 1935. L. L. Nightengale, Clerk.

[fol. 122] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

Upon consideration of the petition of the Wheeling Steel Corporation, the appellant in the above entitled cause, for the allowance of an appeal to the Supreme Court of the

United States from the judgment of the Circuit Court of Ohio County, West Virginia, (Writ of Error having been denied by the Supreme Court of Appeals of West Virginia on September 3, 1935), accompanied by an assignment of errors and statement as to jurisdiction, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated July 8, 1935, of the Circuit Court of Ohio County, West Virginia, as prayed in said petition, and that the Clerk of the Circuit Court of Ohio County, West Virginia, shall, within forty (40) days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said Court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is further ordered that security for costs on appeal be fixed at the sum of $500.

Charles E. Hughes, Chief Justice of the United States.

November 22d, 1935.

[Endorsed:] Filed and entered of Record Nov. 25, 1935. L. L. Nightengale, Clerk.

[fol. 123] Bond on appeal for $500.00, approved and filed Nov. 25, 1935, omitted in printing.

[fol. 124] Citation, in usual form, showing service on Homer A. Holt, filed Nov. 29, 1935, omitted in printing.

[fol. 125] SUPREME COURT OF THE UNITED STATES

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD—Filed Dec. 19, 1935

To the Clerk of the Circuit Court of Ohio County, West Virginia:

It is hereby stipulated by counsel for appellant and appellees that the whole of the record, W. H. [omitting duplications],* shall be included J. E. B. in the transcript to be certified and transmitted to the Supreme Court of the United States.

Wright Hugus, J. E. Bruce, Counsel for Appellant, Wheeling Steel Corporation. Homer A. Holt, Attorney General of the State of West Virginia, Counsel for the Appellees, Fred L. Fox, etc., et al.

December 16th, 1935.

[File endorsement omitted.]

[fol. 126] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 127] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed Dec. 28, 1935

Comes now the Appellant and adopts its assignments of error as its statement of the points to be relied upon, and represents that the whole of the record as filed, but

---

[*Words in brackets erased in copy.]

omitting duplications, is necessary for the consideration of the case.

Wright Hugus, J. E. Bruce, Counsel for Appellant.

Dec. 16th, 1935.

Service acknowledged this 16th day of December, 1935.

Homer A. Holt, Attorney General of the State of West Virginia, for Fred L. Fox, State Tax Commissioner, et al., Appellees. Address: Capitol Building, Charleston, West Virginia.

[fol. 128] [File endorsement omitted.]

Endorsed on cover: File No. 40,217. West Virginia, Circuit Court of Ohio County. Term No. 663. Wheeling Steel Corporation, appellant, vs. Fred L. Fox, State Tax Commissioner of West Virginia, and Karl G. Sailer, Assessor of Ohio County, West Virginia. Filed December 28, 1935. Term No. 663, O. T., 1935.